



Kisseloff-23290

74-1333-4687

2 Enclosures for BUREAU  
Att: INSP. A. H. BELMONT  
Re: NY File 65-14920

Kisseloff-23291

UNITED STATES COURT OF APPEALS

For the Second Circuit

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UNITED STATES OF AMERICA,

Appellee,

-against-

ALGER HISS,

Appellant.  
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Before:

SWAN, AUGUSTOS N. HAND and CHASE,

Circuit Judges.

Appeal from a judgment of the District Court for  
the Southern District of New York. Affirmed.

Irving H. Saypol, United States Attorney for  
the Southern District of New York,  
Attorney for Appellee.

Clark S. Ryan, Special Assistant to the U.S. Attorney

Thomas J. Donegan, Special Assistant to the  
Attorney General, of Counsel.

Thomas F. Murphy, Amicus Curiae.

Beer, Richards, Lane & Haller, Attorneys for  
Appellant.

Robert M. Benjamin,  
Harold Rosenwald,  
Chester T. Lane, <sup>Case off-23292</sup>  
Kenneth Simon,

Of Counsel.

CHASE, Circuit Judge:

On December 15, 1948, the appellant testified  
under oath as a witness before a grand jury of the United  
States sitting in the Southern District of New York that

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he had never, nor had his wife in his presence, turned over any documents of the State Department or of any other Government organization, or copies of such documents, to Whittaker Chambers or to any other unauthorized person. He also testified before the same grand jury on the same day that he thought he could definitely say that he did not see Mr. Chambers after January 1, 1937. This grand jury returned an indictment charging in count one that he committed the crime of perjury when he testified as firstly above stated and in count two that he did when he testified as secondly above set forth. He was duly tried by jury twice, the jury at the first trial having failed to agree upon a verdict. At the second trial he was convicted on both counts and has appealed from the judgment and sentence thereon.

He relies for reversal upon the alleged insufficiency of the evidence as to both counts to comply with the law applicable in perjury cases to the quantum of proof; upon error in construing the scope of the second count too broadly; upon other trial errors, including faulty instructions in the charge; and upon the failure to grant <sup>his</sup> motion to dismiss the indictment and to arrest the judgment.

It is well established that the uncorroborated testimony under oath of one witness is not enough as a matter of law to prove the crime of perjury. *Hammer v. United States*, 271 U. S. 620. There must be either two witnesses who testify that the accused violated his oath, or one witness to that and corroboration by other evidence which is believed by the jury, and is found by it to substantiate the testimony of the one witness. *Weiler v. United States*, 323

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1. 18 U.S.C. § 1621; 28 U.S.C. § 1257.

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U. S. 606. This corroboration of the testimony of a single witness should be such that it supplies independent proof of facts inconsistent with the innocence of the accused. United States v. Isaacson, 2 Cir., 59 F. 2d. 966; United States v. Buckner, 2 Cir., 118 F. 2d 468, 469.

To determine whether the government's proof in this case complies with this standard, some of the events leading up to the time when the charged perjury was alleged to have been committed should be reviewed. A committee of Congress known as the Committee on Un-American Activities of the House of Representatives had, before August 3, 1948, been conducting investigations as authorized of matters which included subversive activities of governmental employees and others. On the above date Whittaker Chambers appeared before that Committee in Washington in response to a subpoena and testified that he had formerly been a member of the Communist Party in the United States and had been associated with a Communist group or "apparatus" in Washington from 1934 to 1938. The object of this group, he said, was to infiltrate its members into responsible government positions; an ultimate goal was espionage. He further testified that the appellant, Alger Hiss, had been an active member of this organization and of the Communist Party. Mr. Hiss, who had been during that time an assistant to Mr. Francis B. Sayre, Assistant Secretary of State, was, when Mr. Chambers so testified before the Committee, president of the Carnegie Endowment for International Peace and was in New York City. He quickly learned from the press that he had been thus accused and lost no time either in issuing a statement in denial or in informing the Committee that he desired to appear before it and to be given an opportunity to make a

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denial there. His request was granted, and on August 5, 1948, he appeared before the Committee in Washington and not only denied categorically that he was, or ever had been, a Communist or a Communist sympathizer, but asserted that he didn't know anyone by the name of Whittaker Chambers. When shown a picture of Whittaker Chambers he could not recognize it as that of anyone he had ever seen and demanded a confrontation.

Mr. Chambers was then recalled, thoroughly examined regarding his acquaintance with the appellant, and gave to the Committee information in considerable detail concerning appellant's places of residence and their arrangement and furnishings, as well as about his habits and family. Mr. Hiss appeared <sup>again</sup> before the Committee on August 16 but without identifying Chambers as anyone he had known. On August 17~~th~~, however, Mr. Chambers and Mr. Hiss met for the first time in the course of the investigation, in the presence of members of the Committee. Mr. Hiss was told who Mr. Chambers was and was asked if he had ever known him before. The appellant replied by requesting that Mr. Chambers be asked to say something. Mr. Chambers was then asked to give his name and business and he gave his name. Mr. Hiss then walked toward him and asked him to open his mouth wider. He again gave his name and added, "I am senior editor of Time magazine". Mr. Hiss then said, "May I ask whether his voice, when he testified before, was comparable to this?" When told by Mr. McDowell of the Committee "I would say it is about the same now as we have heard," Mr. Hiss asked to have Mr. Chambers talk "a little more". Mr. Chambers was then asked to read something, but before he did Mr. Hiss said, "I think he is George Crosley, but I would like to

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hear him talk a little longer." Appellant then said to Mr. Chambers, "Are you George Crosley?" to which Mr. Chambers replied, "Not to my knowledge. You are Alger Hiss, I believe." Mr. Hiss rejoined, "I certainly am," and Mr. Chambers said, "That was my recollection." After this Mr. Nixon of the Committee remarked, "Since some repartee goes on between these two people, I think Mr. Chambers should be sworn." That was done and Mr. Chambers read from a magazine. Mr. Hiss interrupted to say, "The voice sounds a little less resonant than the voice that I recall of the man I knew as George Crosley. The teeth look to me as though they have been improved upon or that there has been considerable dental work done since I knew George Crosley, which was some years ago." Upon inquiry Mr. Chambers said that he had had extensive dental work done. Mr. Hiss wanted to know the name of the dentist and Mr. Chambers supplied that with the address. Then Mr. Hiss said, "That testimony of Mr. Chambers, if it can be believed, would tend to substantiate my feeling that he represented himself to me in 1934 or 1935 or thereabout as George Crosley, a free lance writer of articles for magazines. I would like to find out from Dr. Hitchcock [the dentist] if what he has just said is true, because I am relying partly, one of my main recollections of Crosley was the poor condition of his teeth." Mr. Chambers then said in reply to a question that his teeth "were in very bad shape" in 1934.

Mr. Nixon of the Committee pressed its inquiry by asking appellant if he felt he would have to have the dentist tell what he did to the teeth before he "could tell anything

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about this man", to which Mr. Hiss replied, "I would like a few more questions asked. I didn't intend to say anything about this, because I feel very strongly that he is Crosley, but he looks very different in girth and in other appearances --hair, forehead, and so on, particularly the jowls."

The appellant, being questioned further, was unable to give the name of Crosley's wife although he did remember that she had stayed in appellant's house "two or three or four consecutive nights" with her husband and infant child while they awaited a van with their furniture, shortly after they had sub-let the appellant's apartment in Washington. He said that he had made this sub-lease of his apartment for the summer to Crosley at cost after having leased a house on P Street in the spring of 1935, but that Crosley had paid him no rent in cash, although he had "once paid in kind"; and had borrowed some thirty-five or forty dollars from him in smaller amounts at different times. Concerning the events leading up to this rental, Mr. Hiss recalled that he first met Crosley when the latter came into his office in the Senate Office Building, where appellant was serving as legal assistant to the Senate Munitions Committee, to inquire about the investigation, probably in the fall of 1934. He saw him on business, he thought, ten or eleven times during the next five or six months. In the spring of 1935, Crosley told the appellant that "he was planning to spend the summer months in Washington to complete his search and investigation of the series of articles which he had been

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2. The appellant here referred to an oriental rug which he testified at the trial he so received and which Chambers testified he delivered to Hiss as a present from the Soviet people.

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engaged upon at the time" appellant first met him. Mr. Hiss then orally sub-let his apartment to Crosley and, learning that Crosley would like to rent a car, told him, "You came to just the right place. I would be very glad to throw a car in because I have been trying to get rid of an old car which we have kept solely for sentimental reasons which we couldn't get anything on for trade-in or sale." Appellant said that car was "one of the first model A Fords." Appellant also testified that Crosley had the use of his apartment and car under this arrangement during the summer of 1935 and that he saw Crosley "several times in the fall of 1935," as he recalled it. He said, "I think he came to my house once or twice after that because of this establishment of a personal relationship. I remember on one occasion he came and brought me a rug which was part payment." Appellant remembered that once when he drove to New York from Washington he took Crosley with him.

The attorney for the Committee then said to the appellant, "Mr. Hiss, you say that person you knew as George Crosley, the one feature which you must have to check on to identify him is the dentures." To this the appellant said, "May I answer that my own way rather than just 'Yes' or 'No'?" And what then followed, up to the time the appellant identified Chambers as the man he had known as Crosley, is now quoted from the transcript:

"Mr. Stripling. Well, now, I would like to preface whatever you are going to say by what I say first.

"I certainly gathered the impression when Mr. Chambers walked in this room and you walked over and examined him and asked him to open his mouth, that you were basing

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your identification purely on what his upper teeth might have looked like.

"Now, here is a person that you knew for several months at least. You knew him so well that he was a guest in your home.

"Mr. Hiss. Would you-

"Mr. Stripling. I would like to complete my statement-- that he was a guest in your home, that you gave him an old Ford automobile, and permitted him to use, or you leased him your apartment and in this, a very important confrontation, the only thing that you have to check on is this denture; is that correct?

tr ✓  
"There is nothing else about this man's features which you could definitely say, 'This is the man I knew as George Crosley' that you have to rely entirely on this denture; is that your position?

"Mr. Hiss. Is your preface through? My answer to the question you have asked is this:

"From the time on Wednesday, August 4, 1948, when I was able to get hold of newspapers containing photographs of one Whittaker Chambers, I was struck by a certain familiarity in features. When I testified on August 5 and was shown a photograph by you, Mr. Stripling, there was again some familiarity features. I could not be sure that I had never seen the person whose photographs you showed me. I said I would want to see the person.

"The photographs are rather good photostats of Whittaker Chambers as I see Whittaker Chambers today. I am not given on important occasions to snap judgments or simple, easy statements. I am confident that George Crosley had notably bad teeth. I would not call George Crosley a guest in my house. I have explained the circum-

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stances. If you choose to call him a guest, that is your affair.

"Mr. Stripling. I am willing to strike the word 'guest'. He was in your house.

"Mr. Hiss. I saw him at the time I was seeing hundreds of people. Since then I have seen thousands of people. He meant nothing to me except as one I saw under the circumstances I have described.

"My recollection of George Crosley, if this man had said he was George Crosley, I would have no difficulty in identification. He denied it right here.

"I would like and asked earlier in his hearing if I could ask some further questions to help in identification. I was denied that.

"Mr. Stripling. I think you should be permitted--

"Mr. Hiss. I was denied that right. I am not, therefore, able to take an oath that this man is George Crosley. I have been testifying about George Crosley. Whether he and this man are the same or whether he has means of getting information from George Crosley about my house, I do not know. He may have had his face lifted.

"Mr. Stripling. The witness says he was denied the right to ask this witness questions. I believe the record will show you stated 'at this time'. I think he should be permitted to ask the witness questions now or any other motion should be granted which will permit him to determine whether or not this is the individual to whom he is referring.

"Mr. Hiss. Right. I would be very happy if I could pursue that. Do I have the Chair's permission?

"Mr. McDowell. The Chair will agree to that.

"Mr. Hiss. Do I have Mr. Nixon's permission.

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"Mr. Nixon. Yes.

"Mr. McDowell. Here is a very difficult situation.

"Mr. Nixon. The only suggestion I would make in fairness to Mr. Chambers is that he should also be given the opportunity to ask Mr. Hiss any questions.

"Mr. McDowell. Of course.

"Mr. Hiss. I will welcome that.

"Mr. Nixon. Mr. Chambers, do you have any objection?

"Mr. Chambers. No.

"Mr. Hiss. Did you ever go under the name of George Crosley?

"Mr. Chambers. Not to my knowledge.

"Mr. Hiss. Did you ever sublet an apartment on Twenty-ninth Street from me?

"Mr. Chambers. No; I did not.

"Mr. Hiss. You did not?

"Mr. Chambers. No.

"Mr. Hiss. Did you ever spend any time with your wife and child in an apartment on Twenty-ninth Street in Washington when I was not there because I and my family were living on P Street?

"Mr. Chambers. I most certainly did.

"Mr. Hiss. You did or did not?

"Mr. Chambers. I did.

"Mr. Hiss. Would you tell me how you reconcile your negative answers with this affirmative answer?

"Mr. Chambers. Very easily Alger. I was a Communist and you were a Communist.

"Mr. Hiss. Would you be responsive and continue your answer?

"Mr. Chambers. I do not think it is needed.

"Mr. Hiss. That is the answer.

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"Mr. Nixon. I will help you with the answer, Mr. Hiss. The question, Mr. Chambers, is, as I understand it, that Mr. Hiss cannot understand how you would deny that you were George Crosley and yet admit that you spent time in his apartment. Now would you explain the circumstances? I don't want to put that until Mr. Hiss agrees that is one of his questions.

"Mr. Hiss. You have the privilege of asking any questions you want. I think that is an accurate phrasing.

"Mr. Nixon. Go ahead.

"Mr. Chambers. As I have testified before, I came to Washington as a Communist functionary, a functionary of the American Communist Party. I was connected with the underground group of which Mr. Hiss was a member. Mr. Hiss and I became friends. To the best of my knowledge, Mr. Hiss himself suggested that I go there, and I accepted gratefully.

"Mr. Hiss. Mr. Chairman.

"Mr. Nixon. Just a moment. How long did you stay there?

"Mr. Chambers. My recollection was about 3 weeks. It may have been longer. I brought no furniture, I might add.

"Mr. Hiss. Mr. Chairman, I don't need to ask Mr. Whittaker Chambers any more questions. I am now perfectly prepared to identify this man as George Crosley."

Before the time when the appellant identified Mr. Chambers as his former acquaintance Crosley, the Committee had before it evidence, much of it testimony of Mr. Chambers, to the effect that the appellant was a member of the Communist Party and active in its behalf when he was employed in the State Department. But up to this time Mr. Chambers had not testified to any breach of trust on the part

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of the appellant or to the commission of any crime. But matters did not remain long in that posture. Mr. Hiss challenged Mr. Chambers to repeat his accusations when not protected by the immunity afforded a witness before a Congressional committee. He did so, and Mr. Hiss brought suit against him in the United States District Court in Maryland to recover damages for the alleged tort. During pre-trial examinations conducted in that suit the plaintiff took the deposition of Mr. Chambers and demanded his production of whatever papers, if any, he had to support his accusations against Mr. Hiss.

Following that Mr. Chambers did produce on November 17, 1948, forth-three typewritten documents and four memoranda written with pencil. It is now conceded that the memoranda were in the handwriting of Mr. Hiss and that all but one of the documents had been written on a Woodstock typewriter which had belonged to Mr. and Mrs. Hiss and had been kept in their home in Washington. The documents were all dated after January 1, 1938 and ranged in date through the first two months of that year and into the third. These typewritten papers were copies of confidential documents in the

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State Department which Mr. Hiss could have obtained, and the penciled summaries were of similar documents which obviously he did have at least long enough to enable him to make the memoranda.

These papers so produced proved to be of such a nature that even at the comparatively late day of their disclosure some could not for security reasons safely be made public, and the proper officials of the government were advised and took charge of them. In response to a subpoena duces tecum served upon him by the Committee above mentioned at his farm in Maryland that same evening, Mr. Chambers produced from a pumpkin, in which he had recently hidden them, two rolls of developed micro-film, which had been made of other confidential documents from the State Department, and three rolls of undeveloped micro-film, one of which was found to have been light struck.

A federal grand jury was sitting in the Southern District of New York at the time investigating possible violations of the criminal laws of the United States, including those relating to espionage. Both Mr. Chambers and Mr. Hiss were called before it and testified as witnesses, Mr. Chambers to the effect that the typewritten copies of documents he produced in the civil action brought by Mr. Hiss had been turned over to him by Mr. Hiss in the early months of 1938, and that during the same time the original documents which the micro-films surrendered to the Committee reproduced had been turned over to him by Mr. Hiss to be micro-filmed, and then returned by him to Mr. Hiss. When Mr. Hiss, testifying before the grand jury under oath, flatly denied this as before stated he was indicted for perjury.

At the trial which ended in the conviction of Mr. Hiss, Mr. Chambers testified in great detail concerning

his relations with Mr. Hiss in Washington. Indeed it is perfectly plain that his testimony, believed as it evidently was by the jury, is of such breadth and scope that, if it was adequately substantiated by other evidence as the law requires, there was enough to support the verdict.

His testimony may be summarized as follows:

Mr. Chambers was ordered "underground" by the Communist Party and was sent to Washington to act as a courier or liaison man to gather information from Communists or their sympathizers there and to take it to the Communist representative of Russia in New York. He soon was introduced, among others, to Mr. Hiss and told that he was a reliable source. Mr. Chambers became intimately acquainted with the appellant and found him to be a reliable Communist as represented. Their wives became friendly and during the summer, after Mr. Hiss had rented a house on P Street, Mr. and Mrs. Chambers lived in his apartment but did not get a Ford car from him. The families visited back and forth, trips were taken together, Mr. Chambers borrowed \$400 of the Hisses when he bought an automobile, and for months they associated on the basis of Communist comradeship. In accordance with a routine they developed, Mr. Chambers customarily called at the Hiss home in the evening about once in two weeks and picked up whatever documents Mr. Hiss had abstracted from the State Department on that day and took them to Baltimore to be micro-filmed. He would then return the originals to Mr. Hiss before daylight the next day. As time went on the two men altered their method so that "production" would be greater. Mr. Hiss would take home each night from the State Department confidential documents which Mrs. Hiss would copy on

a Woodstock typewriter they had in their house. These copies would accumulate, and when Mr. Chambers called at the Hiss home on one of his fortnightly visits he would pick up what copies they had, together with any originals Mr. Hiss had that day brought home. What he produced in the pre-trial examination in the civil suit against him was the fruit of his last such pick-up before, having lost sympathy with it, he renounced Communism in 1938. He did not deliver this material to his superior in New York but took it in a package to his wife's nephew in Brooklyn for safe keeping. The nephew testified that he received the package then, that he was not told what was in it, and that he returned it unopened to Mr. Chambers when he called for it.

Pending to substantiate Mr. Chambers' testimony was the concession that all the copied documents produced by him were, save one, copied on the Hiss Woodstock typewriter. According to the testimony of appellant and his wife, that typewriter had been given to one of their servants and taken away from their home before the dates of any of the documents of which Mr. Chambers produced copies, but there was sufficient contradictory evidence, other than that of Mr. Chambers, to enable the jury to find that the typewriter was in the Hiss home during the time when the documents might have been copied on it. Nor does the lack of any direct evidence of when the copies were typed (other than the dates of the originals) affect the sufficiency of this corroboration. It was, of course, possible that the copies were typed later either from the originals or from micro-filmed copies of them stored away for this purpose. That, however, was properly a question for the jury, not for this court.

The testimony of Mr. Hiss may be well characterized as a stout and persistent denial that he was, or had been, a Communist or a Communist sympathizer; that he ever turned over any State Department papers or documents to Mr. Chambers or to anyone else who did not have authority to receive them; or that he had seen Mr. Chambers after January 1, 1937. He further testified that he had sub-let his apartment to Crosley, whom he had, as before stated, identified as Mr. Chambers, not only at the rental he was paying for it unfurnished but that he left it partly furnished and had paid for the gas, electricity and the telephone, in addition to providing the Ford car, all without making any charge to his sub-tenant.

Aside from dental repairs, probably more extensive than the average person requires during such a period, there was nothing to show any change in the appearance of Mr. Chambers which should be unexpected in a man of his age during about ten years between the time the appellant admitted having last seen and known him as Crosley and the time in 1948 when he denied that he could recognize Mr. Chambers. The jury might well have believed that the appellant had been less than frank in his belated recognition of Mr. Chambers as a man he had known as Crosley and had admittedly known well enough to provide for him a partly furnished apartment <sup>at cost</sup> with all utilities free to say nothing of an automobile, old certainly, but still useful. The jury had ample evidence other than the testimony of Mr. Chambers on which to find, as it evidently did, that the documents of which Mr. Chambers produced copies were all available to Mr. Hiss at the State Department and that finding, coupled with the admitted fact that they were copied on a typewriter which the jury could

well find was used for that purpose when in the possession of Mr. Hiss in his home, supplied circumstances which strongly corroborated the testimony of Mr. Chambers. Indeed, such known circumstances tend to fill out a normal pattern of probability when so interpreted, while in attempting to reconcile them with the appellant's denial of association with the delivery of State Document documents, or their copies, to Mr. Chambers, one approaches the realm of sheer speculation. To the prosecution's theory that the appellant abstracted these copied documents and took them home where they were copied on a typewriter which the jury could, and doubtless did, find was then in his home, the only possible alternative is that one or more others abstracted them (for there is not the slightest evidence or suggestion that this Woodstock typewriter was ever in the State Department) and then took what pains were needed to copy them, or have them copied, on that particular typewriter either at the Hiss home or elsewhere on some later date and, if at the Hiss home, unbeknown to Mr. or Mrs. Hiss. Obviously that would have entailed some risk of detection by the Hisses which the use of some other means of copying would not have involved. It seems abundantly clear that the jury was amply justified in believing that these circumstances did not indicate some ulterior motive to harm the appellant at some future date but in believing that they pinned the abstractions and deliveries fast to the appellant himself. The foregoing is an attempt not to summarize the mass of evidence introduced at the trial below, but only to show, as we think it does, that there was independent evidence sufficient as a matter of law, if believed and so considered by the jury, to substantiate the testimony of Mr. Chambers, in compliance with the rule in perjury cases as to both counts.

There was, however, additional evidence in support of count two. Both Mr. and Mrs. Chambers testified that Mr. Hiss met and saw Mr. Chambers at a time after January 1, 1937, not within or about the months of February and March, 1938. Had each testified to a separate occasion, their testimony might, nevertheless, have satisfied the two witness rule in prosecutions for perjury and have taken count two to the jury. United States v. Seavey, 3 Cir., 180 F. 2d 837; cert. denied 339 U.S. 979; United States v. Palese, 3 Cir., 133 F. 2d 600. We are not confronted with that question, however, for the trial judge instructed the jury that the two witness rule required that Mr. and Mrs. Chambers testify to the same occurrence. The jury could have found that they did, for there was no reason to suppose that Mr. and Mrs. Chambers, though failing to identify precisely the same dates, were in disagreement on the fact that they had both met Mr. and Mrs. Hiss in December, 1937. But the appellant insists that count two was so limited by its language that it could not be supported on this evidence. Its language was that when the appellant testified before the grand jury as charged in the count he knew his testimony was untrue "in that the defendant did in fact see and converse with the said Mr. Chambers in or about the months of February and March 1938".

The appellant moved for particulars as to meetings within the designated period, requesting no information as to any others claimed to have occurred, and the government supplied the particulars as requested. The record shows that counsel for the government at the hearing on the



motion made it perfectly plain that it did not intend to limit its proof at the trial to meetings of Mr. Hiss and Mr. Chambers in or about February and March, 1938, provided it could procure evidence of other meetings. Nor did the appellant claim surprise, or move for a continuance on that ground, or otherwise object to the admission of this evidence. Instead what the appellant did was to request the court to instruct the jury to acquit him on the second count unless it found that he saw Mr. Chambers in or about the months of February and March, 1938, and he excepted to the refusal of his request.

It is the rule in this circuit that an indictment for perjury is sufficient if it alleges the falsity of the accused's oath without alleging what the truth was. *Sharron v. United States*, 2 Cir., 11 F. 2d 659; *United States v. Otto*, 2 Cir., 54 F. 2d 277. See also Rule 7(c) of the Federal Criminal Rules; *Flynn v. United States*, 9 Cir., 172 F. 2d 12; *United States v. Bickford*, 9 Cir., 168 F. 2d 26. Absent surprise, or some like special ground for relief, the appellant has shown no error in treating as surplusage the language he claimed to be a limitation. Moreover, as the sentences on both counts could lawfully have been imposed upon either, and are the same, and are to run concurrently, the conviction upon either, if without error, would alone sustain the judgment and require its affirmance. *Whitfield v. Ohio*, 297 U. S. 431, 438; *United States v. Bronson*, 2 Cir., 145 F. 2d 939, 944.

The third point made by the appellant is that reversible error was committed when the government called each of two witnesses who, it is said, the prosecutor knew would refuse on the ground of self-incrimination to answer

at least some of the questions he intended to ask them. One of these witnesses was Felix Inslerman, who was the man in Baltimore to whom Mr. Chambers testified he took the papers he received from Mr. Hiss to have them micro-filmed. Mr. Inslerman, who had not been a witness at the first trial, testified that he lived in Baltimore and that in about the middle of 1937 while living there he had purchased a Leica camera which he had had ever since, and which he identified as Government's Exhibit 51. Claiming the privilege above stated, he refused to answer when asked if he had during 1937 met a man whose name, he had now been told, was Whittaker Chambers, and also when asked if he had ever photographed any paper documents during that year with that camera.

The other witness whose calling to the stand is assigned as error was William Rosen, whose name appeared of record in Washington, D. C., in the office where certificates of title and transfers of title to automobiles are recorded, as the transferee of the above-mentioned Ford automobile. His transferor was the Cherner Motor Company, which was, according to the record in the same office, the transferee of Alger Hiss who signed and swore to that transfer on July 23, 1936. At investigations previous to the trial, Rosen had refused on the ground of self-incrimination to answer some questions concerning these transfers. He had been

3. Webb, a government expert, testified that tests showed that this was the camera used to make the micro-films which Chambers had produced. Inslerman's and Webb's testimony was not irrelevant, as appellant contends, for it tended to confirm Chambers' testimony that he had the documents and that he gave them to Inslerman to photograph, matters which, although not contested by Hiss, were an integral part of Chambers' story.

adjudged in contempt and sentenced therefor when he so refused as a witness before the federal jury in New York. This was reversed by this court. *United States v. Rosen*, 174 F. 2d 187, cert. denied 338 U. S. 851. The government knew that he would refuse to answer some of the questions he would be asked when called at this trial and so did Mr. Cross, trial counsel for the appellant, who at once objected on the ground stated. The witness did claim his privilege against self-incrimination and refused to answer any questions having reference to the Ford automobile or to its transfer, or to whether he was a Communist. He also testified favorably to Mr. Hiss in that he denied that he knew him; that he had ever had any relations with him; or that he had ever seen him before the trial. The judge told the jury when this witness left the stand "to draw no inference unfavorable to this defendant because of the fact that this witness \*\*\* has claimed immunity."

In some state court decisions language has been used which may support the appellant on this point.<sup>4</sup> In an earlier opinion of this court, after noticing that Professor Wigmore held the view that the privilege was but an option to refuse to answer and not a prohibition of inquiry, 8 Wigmore on Evidence, 3d ed. § 2268, we remarked by way of warning, "Nevertheless we are not prepared to say that it would not be ground for reversal if the party who called a witness connected with a challenged transaction knew, or

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4. *McClure v. State*, 95 Tex. Crim. Rep. 53, 251 S.W. 1099; *Rice v. State*, 121 Tex. Crim. Rep. 68, 51 S.W. 2d 364.

had reasonable cause to know, before putting the witness on the stand that he would claim his privilege."<sup>5</sup> We do not now say that such an abuse might not sometime occur so as to require reversal, but we find no such abuse occurred below. Cf. *Weinbaum v. United States*, 9 Cir.-- F. 2d --; dec'd Sept. 19, 1950; *People v. Kynette*, 15 Cal. 2d 731, 104 P. 2d 794, cert. denied 312 U. S. 703. Where a prosecutor is charged with conduct so prejudicial as to amount to reversible error, the charge should be made good by showing a successful effort to influence the jury against a defendant by some means clearly indefensible as a matter of law. It is not enough if there are no more than minor lapses through a long trial. *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150, 239-40. Cf. *United States v. Euckner*, 2 Cir., 108 F. 2d 921, 928, cert. denied 309 U. S. 669.

The grounds for the motion to strike the testimony of Mrs. Massing, which was denied, were its lack of weight and the questionable credibility of the witness, neither touching admissibility. The basis for the objection to the testimony of Mrs. Murray was that it was out of order in that it was received in rebuttal. These are matters so clearly within the discretion of the judge who so clearly exercised it well that we think no more need be said.

Mr. Hiss on direct examination had testified to conversations he had had with Mr. Dulles, chairman of the board of the Carnegie Endowment, concerning appellant's employment as its president; concerning charges of his having been a Communist or having been associated with Communists;

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5. *United States v. Five Cases etc.*, 179 F. 2d 519, 523.

and what he had done at times to refute such charges. The implication was that Mr. Dulles, having learned the facts as to such accusations, did not credit them. This testimony, if believed, would have afforded evidence of the good character of Mr. Hiss in addition to the direct evidence to that effect in the testimony of the character witnesses he called. In rebuttal, the government called Mr. Dulles, who testified without objection in partial contradiction. After both parties had rested and the summation for the appellant had been finished, a motion was made to strike the testimony of Mr. Dulles on the ground that the contradiction of Mr. Hiss on an immaterial matter had been permitted in rebuttal. Its denial is now claimed to be reversible error. We cannot agree. Insofar as Mr. Dulles' testimony may be said to be contradictory, it tended to refute the inferences of good character which might otherwise be drawn from the testimony of Mr. Hiss, and was therefore not collateral, but bore directly upon an issue he had raised himself. Moreover, what is within the scope of permissible contradiction is largely a matter of avoiding confusion of issues, and as such should be left to the discretion of the trial judge. Cf. *Moyer v. Aetna Life Ins. Co.*, 3 Cir., 126 F. 2d 141; *Salem News Pub. Co. v. Caliga*, 1 Cir., 144 Fed. 965; *Lizotte v. Warren*, 302 Mass. 217, 19 N.E. 2d 60.

It is sufficient also to dispose of the attack upon the government's chief trial counsel by referring to what has previously been said in respect to his calling the witnesses Inslerman and Rosen. There was nothing in his general conduct which can justify reversal.

The charge of the court was clear and comprehensive with such due attention to detail in respect to the law

relevant to the facts which might be found upon the evidence that all the requests to charge which should have been granted were adequately covered. We find no error in it.

The effort to have the judgment arrested and the indictment dismissed was induced by a clearly untenable theory that the statute of limitations had barred the prosecution of the offense charged in the indictment.

Judgment affirmed.

Kisseloff-23327

94-1233-4687

Kisseloff-23328

**United States Circuit Court of Appeals**

**SECOND CIRCUIT**

(COPY)

**OPINION**

**CHASE,**  
*Circuit Judge.*



Kisseloff-23330

PHOTOSTATED BY  
OFFICE OF U.S. ATTY.  
S.D.N.Y.

DEC 4 1950

74-1333-4687

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**United States District Court**

**SOUTHERN DISTRICT OF NEW YORK**

**Criminal No. C-128-402**

**UNITED STATES OF AMERICA,**

against

**ALGER HISS,**

*Defendant.*

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**NOTICE OF HEARING OF MOTION FOR NEW TRIAL  
MOTION  
AFFIDAVITS**

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**BEER, RICHARDS, LANE & HALLER,**  
*Attorneys for Defendant.*

Exhibits accompanying this motion were withdrawn  
with the understanding that they will now be  
filed with the office of the Clerk of the District  
Court until exact copies are served upon the  
United States Attorney.

January 24th, 1950.  
at 4:45 P.M.

*Henry Horn*

Kisseloff-23331

**United States District Court**

**SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,  
against  
ALGER HISS,  
Defendant.

Criminal No.  
C-128-402

**NOTICE OF HEARING OF MOTION FOR A NEW TRIAL  
BASED ON THE GROUND OF NEWLY  
DISCOVERED EVIDENCE**

*Sir:*

PLEASE TAKE NOTICE that the within motion under Rule 33 of the Federal Rules of Criminal Procedure, for a new trial of the defendant herein, Alger Hiss, based on the ground of newly discovered evidence, will be brought on for hearing before this Court at Room 318 in the United States Courthouse, Foley Square, Borough of Manhattan, City of New York, on the 4th day of February, 1952, at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel may be heard.

Dated: January 24, 1952.

BEER, RICHARDS, LANE & HALLER,  
Attorneys for Defendant,  
70 Pine Street,  
New York 5, New York.

To:

THE HONORABLE MYLES J. LANE,  
United States Attorney,  
Southern District of New York.

Kisseloff-23332

**United States District Court**

**SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

against

ALGER HISS,

Defendant.

Criminal No.  
C-128-402

**MOTION FOR A NEW TRIAL BASED ON THE GROUND  
OF NEWLY DISCOVERED EVIDENCE**

ALGER HISS, the defendant herein, pursuant to Rule 33 of the Federal Rules of Criminal Procedure moves the Court for an order granting a new trial on the ground of newly discovered evidence, and for such other and further relief as the Court may deem just and proper.

Dated: January 24, 1952.

BEER, RICHARDS, LANE & HALLER,

By:

*Chester T. Lane*  
Chester T. Lane,  
A member of said firm,

Attorneys for Defendant,  
70 Pine Street,  
New York 5, New York.

Kisseloff-23333

**AFFIDAVIT OF CHESTER T. LANE IN  
SUPPORT OF MOTION**

**UNITED STATES DISTRICT COURT**

**SOUTHERN DISTRICT OF NEW YORK.**

UNITED STATES OF AMERICA,

against

ALGER HISS,

Defendant.

Criminal No.  
C-128-402

STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss.:

CHESTER T. LANE, being duly sworn, deposes and says:

I am an attorney at law, a member of the firm of Beer, Richards, Lane & Haller, attorneys for Alger Hiss, the defendant herein, and am in charge of this case for my firm. I make this affidavit in support of the defendant's motion for a new trial on the ground of newly discovered evidence under Rule 33 of the Federal Rules of Criminal Procedure.

The indictment contains two counts, each for the crime of perjury allegedly committed by defendant on December 15, 1948. The first count alleges that on or about December 15, 1948, the Grand Jurors duly impanelled and sworn in the United States District Court for the Southern District of New York were conducting an investigation pertaining to possible violations of espionage laws of the United States and other federal criminal statutes, and that it was material to that investigation to ascertain whether United States statutes had been violated by the unlawful abstraction or removal of secret, confidential or restricted documents, writings, sketches, notes or other papers by persons employed by the United States Government, or by the furnishing, delivery or transmittal of any such documents, writings, sketches, notes or other papers to any unauthorized persons. The first count further alleges that the defendant, a witness before said Grand Jury, testified under oath that he had not turned over to one Whittaker Chambers any documents of the State Department or of any other government organization, or copies of any such documents. The first count charges that the said testimony of defendant was false in that the defendant "being then and there employed in the Department of State, in or about the months of February and March, 1938, furnished, delivered and transmitted to one Jay David Whittaker Chambers, who was not then and there a person authorized to receive the same, copies of numerous secret, confidential and restricted documents, writings, notes and other papers the originals of which had theretofore been removed and abstracted from the possession and custody of the Department of State."

The second count, after realleging the allegations of the first count pertaining to the Grand Jury investigation, alleges that defendant further testified as a witness before the Grand Jury that he thought he could say definitely that he had not seen Chambers after January 1, 1937. It charges that that testimony was untrue in that "the defendant

did in fact see and converse with the said Mr. Chambers in or about the months of February and March, 1938."

Defendant pleaded not guilty to each count of the indictment on December 16, 1948. The case was first tried before the Honorable Samuel H. Kaufman and a jury from May 31, 1949, until July 8, 1949. After deliberating over a period of 28 hours the jury reported that it could not agree, and was discharged. The case was again tried before the Honorable Henry W. Goddard and a jury from November 17, 1949, until January 21, 1950. After deliberating over a period exceeding 23 hours, the jury returned a verdict of guilty on each count of the indictment. Defendant was sentenced on January 25, 1950, to five years on each count of the indictment, the sentences to run concurrently.

The defendant's appeal was argued on October 13, 1950. The judgment was affirmed on December 7, 1950. A petition for rehearing was filed on December 19, 1950, and denied on January 3, 1951. A petition for a writ of certiorari was filed in the Supreme Court of the United States on January 27, 1951, and denied by that Court on March 12, 1951. The defendant surrendered to the United States Marshal on March 22, 1951, and was committed to the Federal Penitentiary at Lewisburg, Pennsylvania, where he is still confined.

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This case had its origin in a charge of membership in an underground group in the Communist Party made against Alger Hiss by Whittaker Chambers before the Committee on Un-American Activities of the House of Representatives on August 3, 1948.\* Alger Hiss denied these charges under oath before the House Committee, and challenged Chambers to repeat his charges where they would not be privileged against suit for libel. Chambers having so repeated these charges, Hiss on September 27, 1948, brought suit for libel against him in the United States District Court for the District of Maryland; and on November 4, 1948, commenced in that suit a pre-trial examination of Chambers, in the course of which Mrs. Chambers was also examined.

In his pre-trial examination in the Maryland action, Chambers was asked by Alger Hiss's attorneys to produce any papers that he might have received from Alger Hiss. On November 17, after an interval of some days, Chambers produced four pencil memoranda in Hiss's handwriting (Government's Baltimore Exhibits 1-4) and 43 typewritten documents, all but one of which it was conceded for the purposes of the second trial were typed on a Woodstock typewriter once owned by the Hisses (Government's Baltimore Exhibits 5-47). Each of these pencil memoranda and typewritten documents was shown at the trial to be either a copy of or excerpt from, or a summary or paraphrase of all or part of, one or more official State Department documents (Government's State Exhibits 1-47).

Upon the production of Government's Baltimore Exhibits 1-47, Hiss's attorneys, on his instructions, immediately turned them over to the Department of Justice.

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\* The designation "H. Hearings, ....." is used below for references to the published testimony before the Committee (Hearings Regarding Communist Espionage in the United States Government, Committee on Un-American Activities, House of Representatives, Eightieth Congress, Second Session).

On December 2, 1948, Chambers delivered to agents of the House Committee two strips of developed microfilm which he had hidden in a hollowed-out pumpkin (Government's Exhibits 11, 12) consisting of photographs of State Department documents (Government's State Exhibits 48 and 50-55). Enlargements of these photographs are marked Government's Baltimore Exhibits 48 and 50-55.

Chambers's production of Government's Baltimore Exhibits 1-47 and Government's Exhibits 11 and 12 resulted in further testimony by him before the House Committee, the transcript of which has never been published by the Committee (except for a brief excerpt read into the record in the course of the testimony of Henry Julian Wadleigh before the Committee). It further resulted in Chambers being recalled, and Alger Hiss being called, before the Grand Jury of the Southern District of New York. On the last day of the Grand Jury's term, December 15, 1948, Alger Hiss gave the testimony on which the indictment is founded.

The Government's case was based so largely on the testimony of Whittaker Chambers that condensed recital of his story as told on the stand is essential to an understanding of the importance of the new evidence presented by this motion. Copy of the printed record on the appeal is on file in the office of the Clerk of this Court, and references to the testimony at the second trial are keyed to the page numbers of the printed record. The following is the substance of Chambers's story at the second trial:

In 1934 Chambers was in Washington, D. C., as a member of the Communist "underground", and in that capacity first met Alger Hiss at "a restaurant in downtown Washington" (which he could not identify). The introduction was effected by one Harold Ware ("the organizer of an underground apparatus in Washington") and one J. Peters ("the head of the whole underground of the American Communist Party") (R. 233-4). At the meeting Peters stated in substance that Alger Hiss, whom he introduced as a Communist, "was to be disconnected from the apparatus which Ware was then organizer of" and "was to become a member of a parallel organization" under Chambers (R. 235). This meeting marked the beginning of a close association between Chambers and Alger Hiss, both on a social level and as active Communist espionage agents.

At the time of the alleged meeting Hiss was counsel to the Senate Committee investigating the munitions industry (Nye Committee), and his first assignment, in the new "organization", was to procure through the Committee, for espionage purposes, original State Department documents that "dealt with some phases of munitions traffic, as nearly as I can remember" (R. 239). In 1936 Alger Hiss entered the Department of State, and thereafter, in January, 1937, Chambers arranged a clandestine meeting between him and a certain Colonel Bykov, "an underground worker in a Soviet apparatus" and Chambers's own superior in the Communist underground, at which Bykov stated in substance that Russia was endangered by the Fascist powers, and that Hiss "could greatly help if he would procure documents from the State Department". Hiss agreed, and soon afterwards began to bring home State Department documents at intervals of a week or ten days which

Chambers would pick up from him at his home and take to Baltimore for photographing, returning the originals the same night (R. 253-8). This method, however, was unsatisfactory in that it resulted in the procurement of "just the documents of a single day" (R. 258); and in the middle of 1937, Chambers instructed Hiss "to have the papers brought out every night, or approximately every night and some of them typed as nearly verbatim as possible and some of them paraphrased" (R. 258). The typing was to be done by Mrs. Hiss. This practice was accordingly initiated, and in addition Alger Hiss would bring home and turn over to Chambers originals of the State Department documents coming to his desk on the particular days of Chambers's visits, and would also turn over handwritten notes "about documents which had passed under his eyes quickly and which, for some other reason he was unable to bring out \* \* \*" (R. 258-9). After photographing, the originals would be returned by Chambers, and the typed copies or paraphrases and handwritten notes would be burned. The photographs would be turned over to Bykov (R. 259).

On April 15, 1938, Chambers broke with the Communist Party, and discontinued his espionage activities. However, for some reason which he has never made clear, he retained some of the papers and exposed film which had accumulated in his hands, and in May or June, 1938, confided them in an envelope to his wife's nephew, Nathan Levine, for safekeeping (R. 260, 291). Levine testified that he kept the envelope in an old dumbwaiter shaft from some time in 1938 until November, 1948, when he returned it to Chambers (R. 727-9). Levine never saw the contents of the envelope (R. 727).

In addition to these "official" contacts claimed by Chambers during the period from 1934 to 1938, Chambers testified to frequent and intimate social contacts between the Hiss and Chambers families. These involved stays in each other's homes, visits on ceremonial occasions, and out of town trips together.

As I have said, the Government's case rested largely on Chambers's testimony. As to the first count, he was the sole witness who testified to the alleged falsity of Hiss's statements; and to the extent that meetings involved in the delivery of documents were relied on to establish the second count, he was the sole such witness under that count also. Since this was a perjury case, the testimony of Chambers had to be substantiated by corroborative evidence under the rule of *Weiler v. United States*, 323 U. S. 606. The corroborative evidence introduced by the Government to support the first count of the indictment consisted essentially of the handwritten and typewritten documents and developed microfilm produced by Chambers as above described. State Department officials produced and authenticated the original official State Department documents from which the copies, paraphrases, and photographs derived. The handwritten documents (Government's Baltimore Exhibits 1-4) were conceded to be in Alger Hiss's handwriting (R. 1073); and a Government expert, Ramos C. Feehan, testified without contradiction by the defense that the typewritten documents, with the exception of Government's Baltimore Exhibit 10, were typed on the same machine as had been used to type certain other documents in evidence which had concededly been typed on a Woodstock typewriter owned by the Hisses in the early 1930's (R. 1074). In addition, the



Government offered evidence that Alger Hiss had had access (although not exclusive access) to most of the State Department documents which had been copied, abstracted or photographed.

To the extent that the meetings involved in the alleged delivery of documents were used to support Count Two, the corroborative evidence tendered by the Government was the same under that count as under Count One. However, the Government also attempted to corroborate Chambers's testimony as to four other alleged meetings after January 1, 1937: (1) a meeting in January, 1937, at which Chambers delivered a rug to Alger Hiss "behind a restaurant on the Washington-Baltimore Road", as "a gift from the Soviet people in recognition of the work of the American Communists" (R. 255); (2) an automobile trip made in August, 1937, by Chambers with Alger and Priscilla Hiss to Peterboro, New Hampshire (R. 278-9); (3) a meeting in November, 1937, at which Alger Hiss lent Chambers \$400 for the purchase of a car (R. 264); and (4) a meeting on "loosely a Christmas occasion" in December, 1937, at the Chambers's home in Baltimore (R. 262). As to the last of these alleged meetings, the corroboration was attempted through Chambers's wife, who testified to a party on the Hisses' wedding anniversary, December 11, 1937 (R. 968). As to the three other meetings, the proffered proof was wholly circumstantial, with no probative force as corroboration.

Conspicuously, the only person other than Mr. and Mrs. Chambers produced by the Government to testify to any disputed meeting between Alger Hiss and Chambers at any time was an alleged maid of the Chamberses, one Edith Murray, who claimed to have worked for the Chamberses under the assumed name "Cantwell" in Baltimore at 903 St. Paul Street from the fall of 1934 to the spring of 1935, and at 1617 Eutaw Place from the fall of 1935 to the spring of 1936, and to have seen Priscilla Hiss four times, and Alger Hiss once, in the Chambers home at 1617 Eutaw Place in the latter winter. Mrs. Murray's first appearance as a witness was at the second trial, and although she was present in the courthouse on the opening day of the trial she was not produced as a witness until the last day of the two-months' trial, at practically the close of the Government's case in rebuttal (R. 3032-3).

In defense, Hiss steadfastly asserted that his statements before the Grand Jury had been truthful. He denied any Communist membership or affiliation of any kind, denied having given Chambers any State Department documents, and denied any close association with Chambers or his family. He testified that in December, 1934, or January, 1935, when he was counsel to the Nye Committee, Chambers came to see him, introducing himself as George Crosley, a free-lance writer doing a series of articles on the munitions investigation (R. 1841, 1843-4). At one of the several subsequent meetings at lunch, Chambers told Hiss that he was planning to come to Washington for a few months to complete his articles on the munitions investigation, and was looking for a place to live with his wife and child. This conversation resulted in Hiss's subletting his apartment at 2831 28th Street, Washington, to Chambers—the Hisses having moved to a house at 2905 P Street and having the balance of the apartment lease on their hands (R. 1846-9, 1851-2). Before moving into the 28th Street apartment the Chamberses spent a few days at the Hisses' P Street

State Department sources for the State Department originals, of whom Henry Julian Wadleigh was one but by no means the only one (R. 1254), and that the typewriter was out of the Hisses' possession by some time in April, 1938, at the very latest (the latest document copied was dated April 1, 1938). And as for Chambers's statement that all the documents (except possibly Government's Baltimore Exhibit 10) had been given to him by Alger Hiss, routing marks and other indicia showed that a number of them were most *unlikely* to have been available to Alger Hiss and most *likely* to have been available to others who might have been Chambers's sources.

#### Summary of Grounds of This Motion

1. Apart from the testimony of Chambers and his wife, the Government's case rested in principal part on the Baltimore Documents, which a Government expert testified had been typed on a Woodstock typewriter owned by the Hisses. Newly discovered evidence shows, and we offer to demonstrate on this motion, that a technique of forgery by typewriter exists which was not known about at the time of the trial, and which if it could have been demonstrated at the trial would have fatally undermined the essential identifying testimony of the Government's expert.

2. The typewriter supposed to have typed the Baltimore Documents was put in evidence at the trial as a physical exhibit, and was used by the Government before the jury as a dramatic visual illustration of Hiss's guilt. Newly discovered evidence points strongly to the conclusion that the typewriter found and produced by the defense in the belief that it was the original Hiss machine was in fact a carefully constructed substitute, which could only have been fabricated for the deliberate purpose of falsely incriminating Alger Hiss.

3. Though the Chamberses testified to long and close social relations with the Hisses, in public as well as in private, Edith Murray, a supposed former maid of the Chamberses, was the only person ever produced by the Government to testify to any such relations. She was first produced on the last day of the second trial, thus enhancing her dramatic effect on the jury and depriving the defense of any opportunity to prepare for cross-examination or to test her credibility. Newly discovered evidence demonstrates that her identification of the Hisses as visitors at the Chamberses' home cannot have any foundation in fact.

4. The core of the Government's case lay in the Baltimore Documents and in Chambers's story that they were documents supplied to him by Hiss for espionage purposes. To support Chambers's story it is essential that his alleged conspiracy with Hiss should have continued until a few days after April 1, 1938, the date of the last of the Baltimore Documents. Newly discovered evidence establishes that Chambers quit his Communist Party activities at the latest several weeks before April 1, 1938, and thus establishes that Chambers's entire testimony regarding the Baltimore Documents is a fabrication.

house, Chambers having told Hiss that he and his wife and child had arrived but that the van bringing their effects had been delayed (R. 1852-3). Hiss and Chambers met a few times thereafter, the last meeting being in the spring of 1936, when Hiss refused Chambers's request for the latest of a number of small loans (R. 1869-70). Both Alger and Priscilla Hiss denied any visits by either of them to any of the Chambers homes, any visits by Mr. and Mrs. Chambers to the Hisses' 30th Street or Volta Place homes, and any trips with Chambers except for one occasion when Hiss gave Chambers a ride from Washington to New York.

A large number of persons of unquestionable integrity testified to Hiss's good character, and Hiss introduced substantial evidence that his beliefs and attitudes, in the State Department and elsewhere, had consistently shown his devotion to the interests of the United States.

In addition, the defense—though faced with the peculiarly difficult problem of proving a negative after the lapse of many years—introduced independent evidence specifically controverting many of the factual statements made by Chambers in his testimony. As an illustration: On the alleged Peterboro trip Chambers and the Hisses were supposed to have stayed in an inn known as Bleak House. The operator of the Inn, Mrs. Lucy Elliott Davis, testified that she had never seen the Hisses before the first trial and had never seen Chambers. She kept a guest book in which it was her practice to have all guests register; the guest book, produced, contained no entries which could represent Chambers and the Hisses under their own or any other names (R. 1670-9). Chambers himself was unable to locate the tourist home where he claimed to have stayed with the Hisses on their way to Peterboro (R. 433-5, 438).

The defense also introduced evidence as to the probable sources of such accurate information as Chambers and Mrs. Chambers did seem to have as to facts concerning Alger Hiss, his family, and their residences, beyond such facts as could readily have been learned during their conceded brief association. For example, it was shown that meetings were arranged by the FBI in February, 1949, between Chambers and the Hisses' two former maids, Claudie Catlett and Martha Pope, at which Chambers questioned the maids about the interior of the Hisses' houses (R. 462-72, 672-3, 1545-50, 1570-3). Likewise, the FBI before the first trial asked Olivia (Plum) Fountain Tesone, a friend of the Hisses and an architect, "a good many detail questions about the various houses the Hisses had occupied" (R. 1785-6), and secured from Teunis F. Collier, a contractor-builder, floor plans of the 30th Street and Volta Place houses as they were when the Hisses occupied them (R. 1734-42). Where such sources of information were not available to Chambers and his wife, defense witnesses showed that they had made demonstrable mistakes (see, *e.g.*, R. 966, 1525, 1528, 1747, regarding the color of the 30th Street house at the time the Hisses lived there).

The proof discrediting the alleged corroborative effect of the Baltimore documents need not be stated at length here. As to the handwritten notes, these were shown to have covered matters on which it would have been appropriate for Alger Hiss to make notes as an aid in reporting to his superior, and contained abbreviations obviously suited only to his personal use. As to the typewritten documents, typed apparently on a machine which had been owned by the Hisses, it was shown by the Government's own proof that Chambers had other

5. Chambers's story depended upon implicating Hiss in a Communist Party group or cell containing several other designated members. Up to the end of the second trial no other alleged member of the group had been willing to testify publicly as to whether the group had in fact ever existed and, if so, what its membership was. Newly discovered evidence, from one prominent alleged member of the group, in the form of sworn testimony before a Congressional Committee, establishes that while such a group did exist, Alger Hiss was not a member of it.

## I

### The Typewriter

Following the conviction of Alger Hiss by the jury on January 21, 1950, on what his counsel were satisfied was in essential part perjured and fabricated evidence, the whole case was reexamined with a view to trying to find out how Chambers had been able to produce documents typed, or appearing to be typed, on a typewriter owned by Alger Hiss and his wife. One possibility was that Chambers had simply borrowed the typewriter, either when it was in the possession of the Hisses or after it had been given to the sons of their colored maid. This possibility had been fully explored at the trial—without apparently convincing the jury; and it seemed unlikely that any new evidence could be found to prove that Chambers had conducted what was in all probability a clandestine operation known only to himself.

The alternative possibility was that instead of using the Hiss typewriter, Chambers had in some way forged the Baltimore Documents so as to make them appear to have been written on the Hiss typewriter. This possibility had not theretofore been explored because of a general belief that experts in the examination of questioned typewritten documents were able to detect to a scientific certainty whether two given documents, or sets of documents, were typed on the same or on different machines. The scientific method by which this is customarily done had been demonstrated by the Government's witness Feehan in his testimony in this case, and advice from experts employed by the defense had furnished no reason to question the soundness of Feehan's method or the correctness of his results.

But after extended reflection it occurred to me that the method employed by Feehan and other experts rested on an assumption that if two typed documents contained a certain number of *similar* deviations from the norm—a repetition of similar peculiarities in a certain number of the typed characters employed in the two documents—the laws of chance would preclude the possibility that two different machines had been used. This assumption, while doubtless sound enough in the ordinary type of case, appeared to neglect altogether the possibility—if it was one—that a typewriter might be deliberately created, or adapted, so as to duplicate some, if not all, of the peculiar characteristics of another. I decided to explore this possibility—to see whether a typewriter could be created which would duplicate a sufficient number of the peculiar characteristics of another to meet the tests which as applied by Mr. Feehan had satisfied him that the same machine had been used in this case for the two sets of documents. If this—which so far as I know had never before been generally supposed possible—*could* be done, the demonstration of it would, it seemed to me, neutralize the "scientific" evidence which had been necessary to

corroborate Chambers's testimony and which hence had been vital to the Government's case.

Accordingly, I consulted one Martin K. Tytell, a noted typewriter engineer in New York City, and explained my problem to him. I asked whether, without ever seeing the typewriter in evidence in the Hiss case—Woodstock #230,099—but working simply from sample documents typed on that machine, he could make another typewriter which would produce typed documents so similar in peculiar typing characteristics to the samples as to meet the tests of identity applied by Mr. Feehan. He said that not only could he do that, but he believed that he could make a machine the product of which would be so exactly similar in *all* respects—not merely in the ten or so characters analyzed by Mr. Feehan—that no expert could distinguish documents typed on the two machines, even if put on his guard by warning in advance that a deliberate effort had been made to construct a duplicate machine. Of course, he said, an expert not so forewarned (as Mr. Feehan was presumably not forewarned) would be even more likely to be mistaken in his attempted identification.

At my request Mr. Tytell undertook to try to create such a machine. The machine he built is now in my possession and, as his affidavit (Exhibit I-A annexed) shows, it was constructed solely from samples of typing on the alleged Hiss machine. Neither he nor anyone working with him has been allowed at any time to inspect the machine which he was attempting to duplicate, or to take impressions of the original type on it.

It became apparent early in the experiment that it would be necessary to secure the assistance of an expert document examiner, not participating in the manufacture of the machine, who would inspect the results as the experiment progressed and give suggestions as to where improvement was needed. Finding such an expert proved an extremely time-consuming task. Expert after expert declined to take any part in the experiment, some of them basing their refusal on firm disbelief in the possibility of the experiment's success, and others more or less frankly intimating that they did not wish to contribute to the success of any experiment which they feared would have adverse effects on the profession of document examination. One well known expert placed his refusal on the ground that in order to demonstrate the success of the experiment he would have to try to deceive a brother expert, which he would consider an unethical course of action.

After many months an associate suggested to me that I consult Miss Elizabeth McCarthy, whom he described as the leading document expert in New England. I did so, and found her willing and able to help. Her work during the course of the experiment has been confined to examining and comparing samples from the two machines, advising as to progress, and making suggestions as to improvement. At the conclusion of the experiment I asked her to embody her conclusions as to its success in an affidavit. Her affidavit is annexed as Exhibit I-B. As it shows, she concludes that the duplication has progressed to such a degree that an expert in the field, however highly qualified, would find it difficult if not impossible to distinguish between samples from the two machines. Her affidavit annexes samples from the two machines, which she believes will demonstrate the soundness of her conclusion.

Of course, any expert now examining these samples in the knowledge that two machines have been used will be forewarned to use much

more rigid standards of examination and comparison than would heretofore have been the case. It is Miss McCarthy's opinion that even though an expert so forewarned might on that account be successful in differentiating the products of the two machines, an expert not so forewarned would conclude that all the samples were made on a single machine. Moreover, she expresses the opinion that the relative, even if not complete, success of the experiment demonstrates that the testimony of the Government's expert, Mr. Feehan, at the second trial, basing his conclusion of identity of machines on the identity of only ten characters in the two sets of documents, is absolutely worthless.

As the experiment was reaching its conclusion I also enlisted the aid of Mrs. Evelyn S. Ehrlich, of Boston, Massachusetts, who was for many years associated with the Fogg Art Museum at Harvard University as an expert in the detection of typographic and other forgeries. I submitted to her samples from the two machines, taken in December, 1951, and early January, 1952. Without any key from me she successfully differentiated the machines, but told me that she considered the duplication to be far more precise than she had imagined possible, and that in her opinion only a very small number of minor discrepancies remained on the basis of which an expert could possibly differentiate the machines. I then asked her to read Mr. Feehan's testimony at the second trial and, having done so, to give me her opinion as to whether the products of my two machines would show as many identical peculiarities as Mr. Feehan had relied on in his testimony as sufficient to prove that the Baltimore Documents and the Hiss standards had been typed on a single machine. She advised me that that was her opinion and, further, that in her opinion the duplication had proceeded to a point where any document expert who, acting with reasonable care, applied the Feehan criteria to specimens from the two machines in the condition which they were in at the time the samples she had seen were made, would reach the conclusion that a single machine had been used to type the two sets of samples.

At my request Mrs. Ehrlich has embodied her opinion in an affidavit (Exhibit I-C) and has accompanied her opinion with extensive photographic material demonstrating the basis for her opinion. As she points out in her affidavit, the examples she selects are illustrative only, as she finds in the two sets of documents far more identical deviations than the ten on which Mr. Feehan relied in his testimony.

In addition, I asked Mrs. Ehrlich whether, from comparison of available specimens of the Hiss standards with current samples from Woodstock #230,099 she could form any conclusion as to whether Woodstock #230,099 was in fact the machine used to type the Hiss standards. Her opinion, expressed in her affidavit, again with illustrative photographic material, raises serious question as to whether it was, although in the absence of original documents in better condition she finds it impossible to form a definite opinion.

The significance of the evidence offered on this point is that it demonstrates a technique of forgery which experts have heretofore not considered practicable, and which Mr. Feehan cannot be supposed to have taken into account. That technique depends, of course, upon the availability of specimens from the typewriter to be duplicated; but there is no question that such specimens would have been available in this case. The new evidence therefore renders valueless the testimony relied upon by the Government to ascribe the typing of the Baltimore Documents to the Hiss machine.

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## II

### Indications of Forgery in This Case

As it became more evident in the course of the experiment described in Point I above that Chambers *could* have created a machine so similar in its product to that owned by the Hisses in the early 1930's as to "stump the experts", counsel for Alger Hiss began to turn their attention to the problem of why Chambers should have done so, and, if he had, what had become of it. As to *why* he should have done so, it could have been because he could not find the original Fansler-Hiss machine when he needed it, or, if he knew where it was, could not or did not dare steal it. The risks of discovery involved in even a discreet hunt for the old machine might have seemed considerable, and would be avoided by using a duplicate machine if the forgery could be made convincing enough.

On the other hand, it could have been that Chambers got hold of the original Fansler-Hiss machine and found it unworkable. This could have been so whether the forgery occurred in 1938 (the approximate date of the State Department documents) or in 1948, when he needed to fabricate some evidence to protect himself in the libel suit; for there was evidence at the trial, *not* emanating from Chambers, that the Fansler-Hiss machine was unworkable in 1938 (R. 1598-9, 1728-9) and also in 1945, when Lockey found it in the rain (R. 1558-9, 2637). In this case, it would have been necessary to fabricate a duplicate, and it would have been most natural, when the work of duplication and forgery was completed, to return the duplicate in place of the original as a means of increasing the deception.

The more this theory was considered, the more tenable it appeared, especially if the forgery and substitution occurred in 1948. When Chambers appeared before the House Committee on Un-American Activities in August, 1948, he gave no hint, any more than he had done in his meetings with Berle (1939) and Raymond Murphy (1945-6), that there were any such things as the Baltimore Documents in existence. Not until the pre-trial deposition hearings in the libel suit in Baltimore in November, 1948, did he suddenly change his story, assert that Alger Hiss had been engaged in an actual espionage operation, and produce the Baltimore Documents with the charge that they had been typed by Priscilla Hiss and given to him by Alger. On the face of it this switch suggested that the documents had been recently typed; and the documents themselves showed that they had been typed on a machine in adequate working condition. Moreover, the machine recovered by the defense from Lockey and placed in evidence (Woodstock #230,099; Defendant's Exhibit UUU) was clearly in adequate working condition; Government witness McCool demonstrated its fitness in court at the trial (Government's Exhibit 66-A; R. 3019), and I can state from my own observation that it is still a relatively efficient machine.

Against this background another peculiarity began to assume importance. It had been established at the trial that the Hisses had disposed of their typewriter by giving it to the two sons of their colored maid, "Mike" and "Pat" Catlett, possibly as early as December, 1937, and certainly no later than April, 1938 (R. 1584-6, 1716-7, 1719-22, 1731-2, 2965-7). Before the trials both the Government and the defense had made earnest efforts to trace the machine. Finally, the defense had been successful in locating a typewriter which, allowing

for lapses in memory over the years, answered the description of the Hiss machine, and which appeared to be traceable through several hands back to the Catletts. An expert retained by the defense had examined the machine and typing from it, and expressed the opinion that it was the same machine as had been used for the admitted Hiss specimens. The defense had accordingly introduced it at the trials on the theory that it was the Hiss machine, and the Government appeared to take the same view; in fact the prosecutor, in summation to the jury at the second trial, pointed to the machine, and said dramatically: "They [the Baltimore Documents] were typed on that machine (indicating). Our man said it was" (R. 3254). And the jury was even instructed by the trial judge that the identification of the typewriter was part of the Government's case (R. 3272).

Yet in fact no Government man had said anything of the kind. No witness for either side had testified that Defendant's Exhibit UUU was the machine used for the Baltimore Documents, or for the Hiss standards typed in the early thirties. The defense would have had no occasion to make such an identification, but it seemed peculiar that the Government's case had been silent on the matter. The typewriter had been impounded with the clerk by court order at the conclusion of the first trial. I am informed (although I have not been able to verify the fact) that at some time between the two trials the machine was temporarily released to the Government (presumably by authority of the Court) so that for all I know it may have been submitted to expert examination by the Government at that time. Whether it was or not is immaterial; in either event the Government made no effort at the second trial to identify it by *testimony* as the Fansler-Hiss machine. The Government's expert Feehan confined his testimony to comparison of the Baltimore Documents and the admitted Hiss specimens. Could it be that the Government also was suspicious of the machine's authenticity?

In the light of all these considerations, and bearing in mind that the expert who before the trials had identified the machine for the defense had rested his opinion on identical peculiarities in only three characters, apparently without consideration of the possibility of a deliberately fabricated machine, I determined to make a thorough study of the authenticity of Woodstock #230,099. That study has produced results which are startling, as far as they go. Admittedly, for reasons described below, they do not go far enough to demonstrate with any certainty that #230,099 is a fabrication; but I believe that they go far enough to cast serious doubt on its authenticity, and to justify calling upon the Court for its aid in supplying the missing links in the chain of evidence.

The general conclusions from my investigation are as follows:

1. According to the best information I have been able to uncover, a Woodstock typewriter bearing the serial number 230,099 would have been manufactured in or around August, 1929, and certainly no earlier than the first week of July 1929. At the same time the best available information indicates that the typeface style on our machine (#230,099) was a style used by the Woodstock Company only in typewriters manufactured in 1926, 1927 and 1928, and possibly the early part of 1929. These inconsistencies point to the conclusion that #230,099 is a fabricated machine.

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2. The documents admittedly typed by the Hisses on the machine owned by them in the early 1930's (Government's Exhibits 34, 36, 37, 39, and 46-B; Defendant's Exhibits SS, TT) were typed on a machine previously owned by Mr. Thomas Fansler, father of Mrs. Hiss. The available evidence points to the fact that this machine was in use in Mr. Fansler's office at least as early as July 8, 1929, and therefore could not have been the typewriter now in the possession of the defense—#230,099.

3. The Government has interested itself in, and has since before the second trial had information about, another machine, bearing a different serial number. There is some indication that the Government has in fact found the machine for which it was searching. In view of the conclusions in paragraphs 1 and 2 above, it would seem probable that this machine, rather than #230,099, is the original Fansler-Hiss machine. Significantly, my investigation of the authenticity of #230,099 is the only phase of my investigative activity which to my knowledge has invoked Government surveillance.

The data upon which the foregoing conclusions are based can only be understood by a somewhat detailed account of my investigation.

#### HISTORY OF INVESTIGATION OF THE TYPEWRITER

Early in the course of the experiment described in Point I, I sent a representative to the Woodstock factory at Woodstock, Illinois, to secure type of the same kind as used in #230,099. Upon his return he informed me that Mr. Schmitt, the Factory Manager, had advised him that the kind of type he was looking for could not belong to a machine with the serial number 230,099, since such a machine would have been manufactured in August or September, 1929, whereas the kind of type requested had been discontinued at the end of 1928. He also told me that Mr. Schmitt had mentioned, without elaboration, that his company "had helped the FBI find the typewriter in the Hiss case."

In an attempt to verify the information given by Mr. Schmitt as to the date of manufacture of #230,099, I had an inquiry made by Mr. Robert C. Goldblatt, a typewriter expert of Chicago, Illinois. This inquiry resulted in an affidavit from J. T. Carlson, Vice-President in Charge of Manufacturing of R. C. Allen Business Machines, Inc., the company which succeeded to the business of the Woodstock Typewriter Company. Mr. Carlson's affidavit, which I annex as Exhibit II-A, indicated that a machine with a serial number only slightly lower than 230,099 would have been made in April or May, 1929.

In view of this divergence of reports, I arranged to have representatives again visit Woodstock to seek an explanation of the discrepancy. My representatives reported to me that at this meeting Mr. Carlson stated that his affidavit had been prepared for him by a clerk and that he himself was not familiar with the facts. He and Mr. Schmitt then produced for inspection certain production records which showed the number of machines manufactured each month during the year 1929, as well as the serial numbers at the beginning and end of that year. One of my representatives, an attorney, further reported to me that after examining these records and discussing their significance with Messrs. Carlson and Schmitt he prepared a draft of an affidavit for Mr. Schmitt's signature, setting forth as accurately as he could the

relevant facts from the records and the inferences which he thought could properly be drawn from them as to the date of manufacture of #230,099. According to this attorney, he returned to Mr. Schmitt's office and gave him the original draft affidavit, and was told by Mr. Schmitt that he would have to consult counsel before signing any affidavit in this matter. I have heard nothing further from Mr. Schmitt or Mr. Carlson with respect to the affidavit.

The attorney who prepared the draft affidavit delivered to me on his return to New York what he described as an original carbon copy of it, and I attach this document as Exhibit II-B. I have requested this attorney to authenticate his draft by an affidavit of the circumstances surrounding its preparation; but he has advised me that although he knows that what he prepared represented at the time his understanding of the records he is unwilling for fear of personal consequences to himself to sign any affidavit connected with the Hiss case.

Having in mind that in any event examination of the records by someone experienced in studying typewriters and their histories might be more productive of accurate results, I later asked one Donald Doud, a document examiner from Milwaukee, Wisconsin (whom I had retained in connection with another aspect of the case, described more fully below) to see if he could arrange for inspection of the records at Woodstock. He reported to me that his written request for an interview and inspection was denied by letter dated December 6, 1951, from Mr. Schmitt, and he sent me Mr. Schmitt's original letter. A photostatic copy of Mr. Schmitt's letter to Mr. Doud is annexed as Exhibit II-C. Mr. Doud has refused to authenticate this letter by affidavit for reasons I describe below (see Exhibit II-G), and now has the original in his possession.

It will be seen that both the facts reflected in the affidavit prepared for Mr. Schmitt's signature (Exhibit II-B), and Mr. Schmitt's letter of December 6, 1951 (Exhibit II-C), indicate that the date of manufacture of #230,099 was not before July, 1929. I have prepared, and attach as Exhibit II-D, a memorandum explaining how this conclusion is necessarily derived from the records inspected by my representatives at Woodstock.

Paralleling the inquiry as to the date of manufacture of #230,099, I initiated an investigation to ascertain the date of original purchase of the Fansler-Hiss machine. The obvious line of inquiry lay in Philadelphia, where Mr. Fansler had been at the time General Agent of the Northwestern Mutual Insurance Company of Milwaukee, Wisconsin. Our files showed that in December, 1948, before the typewriter had been found, a defense investigator had reported an interview with Harry L. Martin, Mr. Fansler's secretary or office associate at the time, in which Martin had told him that the Fansler Woodstock had been originally purchased in early 1928. This seemed worth checking on further and I had a representative attempt to interview Mr. Martin again. My representative informed me that Mr. Martin had declined to grant him a personal interview, and had stated that he would not discuss the matter under any circumstances without the formal consent of the Agent in charge of the FBI in Philadelphia.

I also requested Kenneth Simon, an attorney then associated with the Hiss defense, to try to locate the dealer from whom Fansler had acquired his machine. Mr. Simon's affidavit as to the results of his inquiry is annexed as Exhibit II-E. As the affidavit shows, Mr. Simon on several occasions interviewed Mr. O. J. Carow, who had been Branch

Manager of the Woodstock Typewriter Company Sales Agency in Philadelphia from 1927 until its discontinuance in 1938. From these interviews several significant facts appeared:

(a) Mr. Carow had been interviewed in late 1948 or early 1949 by the FBI, and had been asked in connection with the Hiss case to locate records of the sale of a machine with a given serial number. He could not remember the exact serial number, and had not been able to find any record of the sale of the particular machine; but he recalled that on the basis of other records in his possession he had advised the FBI that the machine they were interested in would have been sold in Philadelphia in November 1927, with a six months margin of error.

(b) Mr. Carow was unable to give even an approximation of the date on which #230,099 would have been sold because the FBI had taken away, and never returned to him, all the material on which he had based his calculation of the date of sale of the machine in which they were interested, and after their visit he had destroyed most of the rest of his records.

(c) Mr. Carow thought, although he was not certain, that the machine the FBI was interested in had a serial number different from 230,099.

(d) Between Mr. Simon's first and his last visit to Mr. Carow (i.e., between October 23, 1950, and January 18, 1951) FBI agents, including a Mr. Kirkland, had been in touch with Mr. Carow to find out what it was that Mr. Simon was trying to learn, and what Mr. Carow had told him.

Mr. Simon's inquiry thus helped us very little in our effort to find out when the Fansler-Hiss machine was originally purchased by Mr. Fansler. It did, however, indicate:

(1) that the FBI, in its search for the original typewriter, had had a serial number to work from, and that that number was different from the number on the machine which the defense had found before the first trial.

(2) that the machine the FBI was looking for had been first sold in late 1927 or early 1928, and so could certainly not be a machine made in 1929, as a machine numbered 230,099 must have been.

(3) that the records which might make it possible for us to prove our point were unavailable, because either the FBI had them or they had been destroyed, and that as late as the end of 1950—nearly a year after the finish of the second trial—the FBI was still enough interested in the problem of the typewriter to be keeping our investigative efforts under surveillance;

This search in Philadelphia for the original sales record of the Fansler machine was only one of the lines of investigation I followed trying to date Fansler's purchase of the typewriter. As a separate inquiry I decided to try to locate letters typed in Fansler's office in the late twenties, with the thought that if I could have such letters compared by an expert with the letters typed by the Hisses in the 1930's, the expert could show just when the typewriter first came into use in the Fansler office.

The most likely place to find such letters was clearly the home office of Fansler's employer, the Northwestern Mutual Life Insurance Company, in Milwaukee, Wisconsin. In early October, 1950, I telephoned Mr. G. M. Swanstrom, the Company's General Counsel, and arranged to have him meet with one of my representatives. My representative reported to me that at the meeting Mr. Swanstrom showed him photostats of letters from the Fansler office written in 1928, 1929, and 1930, but would not allow him to see the originals or to borrow the photostats for examination by an expert. The 1929 letters, according to my representative, were dated January 14, June 29, July 8, and August 21; and the July 8 and August 21 letters appeared to him to be typed on a Woodstock, and on a different machine from that used for the earlier letters.

At my request my representative made a further attempt about a month later to persuade Mr. Swanstrom to let him have an expert examine the Northwestern Mutual letters, and compare them with the Hiss standards. He reported that again Mr. Swanstrom declined, this time saying that prominent policyholders of the Company had indicated disapproval of permitting access to the Company's files without a subpoena. As I had no legal right to a subpoena, I could do nothing.

For a while the matter necessarily rested there, but in September, 1951, a private investigative agency which I had retained to cover certain limited aspects of the inquiry for me reported that Mr. Swanstrom might be willing to release the letters for examination to a Mr. Donald Doud, a document examiner in Milwaukee practising in association with Mr. John F. Tyrrell, a former employee of Northwestern Mutual who had made himself a considerable reputation in the field of examining questioned documents. I went to Milwaukee, and found Mr. Doud already in possession of the originals or photostats of a substantial number of letters written from the Fansler office to Northwestern, running in date from July 23, 1927, to February 14, 1930—including photostats of the July 8 and August 21 letters which my representative had seen in Mr. Swanstrom's office. We talked over my problem at length, and I explained that since I had reason to believe that #230,099 had not been made before July, 1929, it was important for me to know whether, in the view of an expert, the Fansler letter of July 8, 1929, or any of the earlier letters was written on the same machine as had been used for the Hiss specimens in evidence at the trial; for if so it would follow that the machine we had found—#230,009—could not be the original Fansler-Hiss machine. I gave him for comparison purposes the originals or copies of the Hiss standards, and also photostats of some of the Baltimore Documents. Mr. Doud undertook, for an agreed fee, to make the necessary document examination and to give me his expert opinion as soon as practicable.

Mr. Doud sent me his opinion on November 6, 1951. I annex his letter as Exhibit H-F. As will be seen from a reading of it, he concludes:

(1) that the Northwestern Mutual letters from the July 8th letter on were written on an "apparently quite new" Woodstock machine different from the machine used for the earlier letters.

(2) that the Northwestern Mutual letters dated July 8, 1929, and later "agree in typeface pattern" with the Hiss specimens, as well as with the Baltimore Documents, and show a tendency "toward the development of typeface defects that later became so

highly identifying in the 1933 and 1935 specimens and the Baltimore Letters."

(3) that he could "find no evidence to show that these early Northwestern Life specimens from July 8, 1929 to February 14, 1930 could not have been written on the same typewriter used for the Baltimore Letters and the Standard Hiss specimens".

(4) that the model typewriter all these letters were written on was of a kind made from 1926 "until some time the latter part of 1928 or early in 1929", and that the letters show "complete agreement in typeface style" with specimens of typewriting from his files dated in 1926, 1927, and 1928.

Although Mr. Doud had been working in large part from photostats which necessarily limited the certainty of his conclusions, it seemed to me that his opinion went far to show that I was on the right track: that the Fansler-Hiss machine could not be the one the defense had found, and that our machine, #230,099, must therefore be a fake, deliberately planted on us by somebody. This would follow not only from his opinion with regard to the July 8th letter, but even more strongly from his opinion that the model typewriter used in the Fansler office from July 8th on, and later by the Hisses, was a model made in 1926, 1927, 1928, or early 1929. Accordingly, I asked Mr. Doud to embody his conclusions in an affidavit, with whatever qualifications he might wish to make arising from the limitations within which he had had to work.

To my surprise Mr. Doud declined to make any such affidavit, or even to authenticate the letter which he had received from Mr. Schmitt at Woodstock in answer to his request to be allowed to look at the production records (Exhibit II-C). I attach as Exhibit II-G Mr. Doud's letter of refusal, dated January 14, 1952. His stated reason is quite clear: he does not believe that it would have been possible for anyone to have faked a typewriter, and therefore he declines to make any affidavit which might be used in connection with an attempt to show that that may well have been done.\*

Nothing in his letter of refusal retreats from the conclusions stated, in however qualified form, in his earlier opinion letter (Exhibit II-F). I attach the letter of refusal for two purposes: (1) to show why I cannot present the original conclusions in affidavit form; and (2) to show to the Court in the most effective form possible the extraordinary difficulties with which the defense has been confronted in its effort to uncover Chambers's methods of operation. Mr. Doud's reference to "evidence [he has] gathered to date" is misleading; Mr. Doud gathered no evidence, but simply made a comparison of certain letters I furnished him with certain letters Northwestern Mutual furnished him. He has never seen #230,099. He has not been asked to give any opinion as to specimens from it. He has not examined the records as to its date of manufacture. He knows nothing about it.

\* As a second reason for his refusal Mr. Doud states that he had to work in part from "blurred photostats", and that "any judgment based upon such poor reproductions must be a qualified one." It will be noted that Mr. Doud's opinion letter of November 6th made no such complaint; and at my conference with him in September, when we both examined the specimens from which he would be working, he raised no question as to the inadequacy of the photostatic reproductions.

He concludes, from "typeface style and pattern", that the Fansler-Hiss typewriter "must have been manufactured during . . . 1926, 1927, 1928, or possibly early 1929", and that therefore Mr. Schmitt must be wrong in saying that that #230,099 was made in July or August 1929.

Why must Mr. Schmitt be wrong? Evidently because, unless he is, the experts could be wrong when they say a machine could not be fabricated. But maybe the experts could be wrong too.

The foregoing is an unfortunately but necessarily elaborate account of the investigation into the authenticity of the typewriter. I do not contend that it has produced usable evidence which would conclusively demonstrate that a fabricated typewriter was used to forge the Baltimore Documents, or that such a typewriter was planted on the defense for deceptive purposes. I do contend, however, that considering the extraordinary handicaps which surround any such investigation on behalf of a private citizen, the matters hereby brought to the Court's attention give rise to such serious doubts regarding that part of the Government's case which rested on the typewriter that justice cannot be done unless the case is reopened for further proof according to law.

It is the handicaps surrounding the investigation which most require the Court's attention. We search for records—the FBI has them. We ask questions—the FBI will not let people talk to us. We request access to ordinary documents in corporate files—corporate officials fear the wrath of their stockholders. We ask people to certify information in files they have shown us—they must consult counsel, and we hear no more from them. We pay experts to give us opinions—and they decline to back them up in court because they "cannot subscribe" to anything which might support the conclusion we believe the facts point to.

And, even worse, honorable and patriotic citizens who have wanted to help have been deterred by the appearance—whether or not it is reality—of official surveillance and wiretapping, and others who have labored to gather information for us in the interests of justice are afraid to come forward for fear of personal consequences which might result to them from public association with the defense of Alger Hiss.

Anyone alive to today's events knows that as a result of Chambers's stories and the trials based on them the name Alger Hiss has become synonymous with treachery and betrayal in high office. If he was guilty, this is perhaps as it should be. But if he was not, it is tragic that the fear and hysteria of the times should be allowed to impede so gravely the efforts of his defenders to unearth and present the evidence which would clear his name.

If a new trial were granted, the defense could then, through subpoena power, present to the jury in evidentiary form much of the information which has necessarily been reflected in this affidavit as hearsay—however reliable. And I urge that the information presented herein is of such significance that if it had been possible to present it to the jury in the second trial, the jury could not but have been shaken from its faith in the genuineness of the Baltimore Documents, the Government's principal corroboration for Chambers's story. A new trial should therefore be granted, without more. But if the Court is not so convinced, I urge, and even more strongly, that in its

consideration of this motion the Court should in the interests of justice invoke its own inquisitorial power. These questions cannot be set at rest unless the Court will bring before it the witnesses who have refused to make oath for us, require the production of documents which have been closed to us, and call upon the Government to show what it knows about the typewriter. And if, as we have deep reason to believe, the Government knows relevant facts about the typewriter which it has during and since the second trial concealed, that alone should require a new trial.

### III

#### Edith Murray

Edith Murray was first produced by the Government as the eighteenth out of twenty Government rebuttal witnesses at the end of a second trial which itself lasted nine weeks. She provided dramatic support for the Chamberses' colorful story of intimate social relations they claimed to have enjoyed with the Hisses. The substance of her brief direct testimony was that in 1934-5 and 1935-6 she had worked as a maid for the Chamberses (under their assumed name of Cantwell) at their homes at 903 St. Paul Street and 1617 Eutaw Place, Baltimore, and that in the course of the latter period she had seen Priscilla Hiss some four times and Alger Hiss once on social visits to the Chambers-Cantwells.

In view of the way Edith Murray was "sprung" by the Government as a witness on the last day of the trial, the defense had no way of preparing to test her truthfulness or the accuracy of her recollection by cross-examination. It was, nevertheless, brought out that FBI agents when they first visited her had shown her pictures of the Hisses (R. 3037) and that she had been most uncertain of any identification at that time. Then she had been taken out to the Chamberses' Westminster farm (R. 3036), where naturally she was available to suggestion as to what her recollection ought to be regarding whether and where she had worked for them and what had happened when she had done so (see R. 3040-3). Thereafter she saw the FBI "quite a bit" (R. 3042); and at the opening of the second trial she was sent up to the courthouse in New York to see whether she "could recognize the woman that was in the picture and the man on the picture" (R. 3056; see also R. 3032-3). She pointed them out successfully. It is scarcely surprising that after this course of education she was able to say on the stand that they were definitely the people she had seen fourteen years earlier at the Chambers-Cantwell home—even though she did not claim to have seen Alger for more than a few minutes on a single occasion (R. 3033), and even though her memory for personal characteristics was so vague that she could not remember whether Chambers, her alleged employer over a large part of two years, had had a mustache (R. 3057).

Edith Murray was the first and only person ever produced, out of the hundred and fifty million people in the United States, to give any support to the Chamberses' story of their relations with the Hisses—unsecret as those relations were supposed to have been. Though the reliability of her recollection was shown to be most suspect, her dramatic appearance as a rebuttal witness must have had an incalculably dynamic effect upon the jury. Beyond question, the Government planned it that way.

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I attach, as Exhibit III-A, a copy of an article in two installments in the August 6 and 13, 1950, issues of the American Weekly (Sunday magazine section of the Hearst newspapers) entitled "How the FBI trapped Hiss". While articles in the press would ordinarily be of no moment on a motion of this kind, this particular article acquires significance because of its apparent sponsorship by the Government. I quote from its opening paragraphs:

High officials of this nation he betrayed testified Alger Hiss bore an excellent reputation for loyalty, integrity and veracity.

A little Negro maid proved him a liar to clinch his conviction for perjury committed in denial of a traitorous act.

If Edith Gland Murray had testified at the first Hiss trial there probably would have been no jury disagreement.

The government was aware of her existence and of her possible great importance but she could not be found. The FBI, racing the clock in the search for her, fine-combing Baltimore for her whereabouts, following time-dimmed leads to dead-ends across the nation, didn't even know her name and knew only vaguely what she looked like 14 years before. And Edith Murray had no idea she was sought.

How the FBI found her on the very eve of Hiss' second trial after a solid year of tracking and back-tracking is a fascinating story. How she justified the effort and how her memory of a simple truth baited the trap into which Hiss thrust his neck complete a drama that matches the finding of stolen State Department papers in a pumpkin on the Maryland farm of Hiss' accuser, Whittaker Chambers.

I heard from J. Edgar Hoover in Washington an outline of the story of search for Edith Murray. He described it as "one of the finest examples of FBI investigative procedure." I asked if I might have it in detail for The American Weekly and he agreed.

The considerable research necessary to correlate the reports of all FBI agents engaged in the hunt recently was completed and a 14-page condensation made available. With this account I visited Asst. U. S. Atty. Thomas F. Murphy, prosecutor at both trials, to build up the climax from his records. *These he produced and helped screen to stress the importance of Edith Murray to the final conviction.* (Italics added.)

Beyond question, the Government's case reached its climax in Edith Murray's testimony. If, then, it can be shown that—whether deliberately or as an innocent victim of suggestion—she testified without basis in fact, that in itself should be sufficient ground to call for a new trial.

I attach as Exhibit III-B an affidavit of William Reed Fowler of Lutherville, Maryland, showing his intimate familiarity with the ménage at 903 St. Paul Street during the period—1934-5—when the Chamberses claim to have lived there, and asseverating that no maid was employed during that period by the tenants or otherwise in the house. Mr. Fowler even casts doubt on Chambers's assertion that he lived at 903 St. Paul Street.

I attach as Exhibit III-C an affidavit of Louis J. Leisman, of 206 E. Read Street, Baltimore, Maryland, the custodian and rent collector at the apartment house adjoining 1617 Eutaw Place during the winter of 1935-6, the period during which Edith Murray claims to have seen the Hisses. Mr. Leisman shows that he knew Chambers-Cantwell during this period, that he observed him frequently, and that he knows that he had no maid during that period, colored or otherwise.

Clearly, whether or not Edith Murray worked for the Chamberses at some time and some place, it was not at the time and place where



she said she saw the Hisses. Therefore, she did not see them, as she said she did, and I believe that fairness and justice call for giving the defense an opportunity to establish that fact at a new trial.

#### IV

##### Chambers's Break With the Communist Party

Throughout the early versions of his story, Chambers consistently placed the time of his break with the Party as being at the end of 1937. He so advised Adolf A. Berle, Jr., according to Mr. Berle's recollection, at their conference at the end of August 1939 (H. Hearings, 1293)—when it might be supposed that his memory for dates would have been fresh. He repeated the statement to Raymond Murphy of the State Department at their meetings in 1945 and 1946, saying on the latter occasion that he "entered into the Washington picture in the summer of 1935, and left it and the Party at the end of December, 1937" (Government's Exhibit 17; R. 3323). Before the House Committee he swore repeatedly that the break occurred in 1937 (*e.g.*, H. Hearings, 565, 572, 573).

In one of his later appearances he amplified this. Appearing on August 30, 1948, he described under oath his acceptance of a position with the United States Government as a means of "establishing an identity" (H. Hearings, 1287). He was not quite certain when this occurred, but thought it was "1937 or the beginning of 1938" (H. Hearings, 1289). As to the date of leaving the Party, he testified as follows:

Mr. Nixon: How long did you hold the job, Mr. Chambers?

Mr. Chambers: I don't think more than 2 months, perhaps 3.

Mr. Nixon: After you left the job, what happened then? Did you leave the party immediately?

Mr. Chambers: I think there may have been 2 or 3 weeks in between. I have no longer a recollection, but I left very shortly thereafter.

Mr. Nixon: In other words, you severed your relationship with the party completely a few weeks afterward?

Mr. Chambers: I disappeared.

Mr. Nixon: Completely disappeared?

Mr. Chambers: Yes, sir (H. Hearings, 1287-8).

Chambers's employment record in the job in question, in evidence as Defendant's Exhibit J, R. 3663, shows that in fact he entered on the job October 18, 1937, and was placed on furlough as of February 1, 1938. His "disappearance" must by his own story therefore have occurred "2 or 3 weeks" after February 1, 1938.

At the second trial, however, the story is changed. According to the new version, his break with the Party occurred approximately in the middle of April, 1938: "I believe it was April 15" (R. 264). Upon this break he moved his family to a room on Old Court Road, near Baltimore, where he stayed for about a month, until he "had obtained a translation to do" from Paul Willert of the Oxford University Press—a translation of a book entitled "Dunant—The Founder of The Red Cross." As soon as he had the translation and an advance he went to Daytona Beach, Florida, where he "finished the translation, and after a month returned to New York" (R. 264-5).

Chambers himself was aware of—or could not escape from—the inconsistency. On cross-examination he was asked: "Now, did you

on a number of occasions say that you broke with the Party in 1937", and he replied: "Yes, I did." He was further asked: "Is that date correct?" and replied: "It is not" (R. 264).

It is obvious why Chambers had to change his story. He had first produced the Baltimore Documents at a pretrial deposition hearing in the Baltimore libel action on November 17, 1948—when he needed some kind of evidence to protect himself against liability for his charges of Hiss's Communist affiliations. The documents he produced covered dates running from January 5 to April 1, 1938.\* Once he had produced them, his old story of having left the Party in 1937, or no later than the middle of February, 1938, would no longer do. He had to provide a new date for his break; otherwise he could not sustain his new tale that he had been collecting State Department information from Alger Hiss for Communist espionage purposes through January, February, and March, 1938. So for the end of his Party activity he came up with April 15, 1938—a convenient date which would allow for the mechanics of abstracting and copying documents received in the Department as late as 7:45 on the evening of April first (Government's State Exhibit 46(4); R. 3627).

The suspicious characteristics of Chambers's changed story were evident on the trial record, and are reiterated here only because the defense has now come into possession of evidence showing that the second story, not the first, was the false one. This new evidence establishes that Chambers had left the Party and secured his translation from the Oxford University Press at least by early March, 1938. Therefore his whole story of Hiss as the source of State Department documents running into April is shown up as a fabrication.

First, I attach as Exhibit IV-A an affidavit of Dr. Martin Gumpert, of 315 East 68th Street, New York, N. Y., the author of the book which Chambers translated. This affidavit recites in general the history of the translation. It shows that the book was first assigned for translation to Mrs. Rita Reil, at some time before the end of December, 1937. Before very long a new translator, Chambers, was substituted. As soon as he was engaged Dr. Gumpert asked to meet him, but was told by the publisher that he could not do so because "he was in hiding from the Russian secret service, known as the G.P.U. and that because he was in hiding he constantly changed his address, and, also, that because he changed his address constantly the Oxford University Press was unable to contact Mr. Chambers, but had to wait for him to contact the Oxford University Press."

Both by Chambers's own testimony and by Dr. Gumpert's affidavit, the date when Chambers got his translation clearly marks the outside limit of Chambers's Party activity. I have made contact both with Mrs. Rita Reil, the first translator, and with Paul Willert, then Vice-President of the Oxford University Press in New York and the editor in charge of publication of Chambers's translation. Together, they confirm the basic facts reflected by Dr. Gumpert's affidavit, and upon a new trial, if one is granted, I intend to call each as a witness; but neither can be any more precise as to the relevant dates than Dr. Gumpert.

However, other records which have now become available to the defense are more precise. I have personally examined the files of the Oxford University Press, 114 Fifth Avenue, New York, relating to

\* That is, the State Department documents copied or paraphrased in the Baltimore Documents were shown to have been received in the State Department between those dates, inclusively.

Chambers's translation of Dr. Gumpert's book, and I have caused an examination to be made of the files of Dr. Gumpert's London agent, Pearn, Pollinger & Higham, Ltd., 39-40 Bedford Street, Strand, London, W. C. 2, regarding the same subject matter. I attach copies of the relevant documents in those files, marked Exhibits IV-B-1 to IV-B-24, inclusive. Though these documents still do not fix the exact date when Chambers got his translation, they prove beyond question that the date was not only well before the middle of May—Chambers's date in his second trial testimony—but well before April first, the date of the last State Department document covered by the Baltimore Documents. Chambers had made his arrangements, got the bulk of his translation, and an advance of \$100, early in March at the latest.

1. Chambers had obviously gotten his translation some time before April 12, 1938, since Willert's letter of that date to him (Exhibit IV-B-11(a)), which the Post Office was unable to deliver (Exhibit IV-B-11(b)), asks how he is getting on with it, and implies that some results are already due. This is confirmed by the fact that a portion of the manuscript had been mailed to him at his Mt. Royal Terrace address in Baltimore on March 18, 1938 (See Exhibit IV-B-9). The delivery instructions were "RUSH — MUST REACH BALTIMORE SATURDAY EXPRESS"; i.e., the next day, since March 18, 1938, was a Friday. Taken alone, this could mean merely urgency on the part of the publisher, or it could more probably mean that Chambers had advised that after March 19th he would no longer be available to pick up the package. That Chambers went into hiding at or about that time is clear from his handwritten letter dated May 3rd to Willert (Exhibit IV-B-16), in which he says: "I have not been at Mt. Royal Terrace for more than a month." In any event, Chambers had clearly become a translator by March 18th, and therefore by his own account must have been out of the Party by that date.

2. The same proof may be tied in more specifically to the Baltimore Documents Chambers claimed to have gotten from Hiss. The last of the State Department messages covered by the Baltimore Documents was an incoming cable dated April 1, 1938 (Government's State Exhibit 46(4)), the third message paraphrased in Government's Baltimore Exhibit 46). This message shows on its face that it was received in the Department at 7:45 P. M. on that day, and therefore it could not have been distributed to the Departmental offices until April 2nd—a Saturday. If Chambers had visited Hiss for a pick-up on April 2nd he would—according to the system he described at the trial—have taken not a typed copy, but the original for photographing that night or over the weekend. There would have been no occasion to paraphrase and type the message if Chambers had visited on April 2nd or 3rd. To have picked up a typed copy he would therefore have had to visit on Monday, April 4th, or some later day. But by April 4th, he was already in hiding, for in the letter of May 3rd to Willert he said that he had not been at Mt. Royal Terrace "for more than a month".\*

\* Although Chambers's handwritten letter bears the date "May 3, 1938", it seems probable that it was actually written on May 4th. From the subject matter, both it and the typed letter dated May 4th (Exhibit IV-B-17) were obviously in answer to Willert's letter dated May 4th (Exhibit IV-B-15). In view of Willert's urgency and irritation he would undoubtedly have written Chambers air mail, and his letter might well have reached General Delivery in St. Augustine on the same day. The fact that stamped notations show that neither of Chambers's answering letters was received by Willert until May 9th is consistent with the facts that Chambers, needing money (see Exhibit IV-B-17), would not have used air mail, and that a weekend intervened, May 9, 1938, being a Monday.

Baltimore Document 46 cannot therefore have been received by Chambers in the manner he asserted at the trial—a further proof out of his own mouth that his story of the transmission of documents to him by Hiss is false.

3. Since a portion of the manuscript was sent to Chambers on March 18th, he must certainly have been out of the Party by that time. But the actual date was even earlier, for further correlation of the information in the Oxford University Press and the Pearn, Pollinger & Higham files shows that the March 18th shipment was the *last*, not the first, batch of manuscript. Chambers's telegram of May 22nd (Exhibit IV-B-22) refers to the "complete translation including extra chapters you sent"; and as the shipping ticket of March 18th (Exhibit IV-B-9) is the only shipping ticket in the file, it must have covered the "extra chapters", and the bulk of the manuscript must have been delivered by hand at some earlier date. That there was such a hand delivery is a natural inference from Chambers's own testimony (R. 265) that he got his translation and an advance\* on a personal visit to Willert in New York—a visit which now is shown to have been at *some* time before March 18th.

4. Just how much before March 18th Chambers quit his espionage activities is still not certain from the records. However, the records do show that the London office of the Oxford University Press learned as early as March 3rd that a new translation was being made and on March 4th instigated inquiries as to its progress (Exhibit IV-B-8). While this may not establish that Chambers had actually been retained by that time, it should be recalled that at the second trial one of the Government's own witnesses, Henry Julian Wadleigh, who was a self-confessed source of many of Chambers's documents, placed the date by strong inference at some time before March 11th, the date on which he left for Turkey. When "the time came near" for him to go to Turkey, he tried to notify Chambers that he was going, but could not because before that time he had been instructed "not to deliver any document for the time being" and had no means of getting in touch with Chambers (R. 1191).

The conclusion to be drawn from these papers is necessarily that Chambers's break with the Party, and his cessation of espionage activity, occurred at least no later than the forepart of March. The new evidence, while generally supporting Chambers's story of his leaving the Party and getting a translation, definitely contradicts it in the vital features which would implicate Hiss. Even if everything that Chambers at the second trial said had happened in this respect did in fact happen, it did not happen *when* he said it did. It happened earlier—enough earlier to contradict and vitiate his testimony as to the source of the Baltimore Documents. And if Chambers was wrong as to the source of the Baltimore Documents, the Government had no case, and the jury could not fail to acquit.

\* The advance would appear to have been \$100, for (a) London was to pay one-half the translation fee (Exhibit IV-B-1); (b) London's half was to amount to \$350 (Exhibit IV-B-10); and (c) Willert completed the first half of his payment to Chambers with a check for \$250 (Exhibit IV-B-11a).

V

**Lee Pressman**

One of the major difficulties facing the defense throughout the trial was Chambers's tendency to bring in—as people involved with him in his Communist conspiracy which he claimed also involved Alger Hiss—people who were either dead or unavailable to deny his story. Thus, Chambers and Hiss were supposed to have met originally at a meeting engineered by two Communist Party officials, Harold Ware and J. Peters. At the time of trial Ware was dead, and Peters had flown from the United States (see R. 357-8). The alleged trip to Peterboro, New Hampshire, was mentioned only after the death of Harry Dexter White, the person whom Chambers claimed to have made the trip to visit. Instances could be multiplied.

In one centrally important phase of his tale, Chambers did use the names of persons who were alive and at least physically available. That was his story of the Communist group to which Hiss allegedly belonged. In the varying versions of this story Chambers nevertheless maintained consistency in his assertion that other members of the group included Nathan Witt, Charles Kramer, John Abt and Lee Pressman (see H. Hearings, 566, 569; cf. Raymond Murphy notes, Government's Exhibit 17). It might reasonably have been supposed that one or more of these persons might have been able to deny Chambers's story, at least so far as Alger Hiss was concerned; but each of them rendered himself as a practical matter unavailable by declining to testify in response to Chambers's charges on the ground of self-incrimination (see H. Hearings, 1015, 1033).

Since the conclusion of the trial, however, one of these men, Lee Pressman, has withdrawn his claim of privilege, and has testified before the House Committee on Un-American Activities regarding the Communist group described by Chambers. He has stated publicly and under oath that such a group did exist, that he was a member of it, that it also included Abt, Kramer and Witt, and that Alger Hiss was not a member of it during the period of his own participation, namely, about a year, from 1934 to the latter part of 1935. This period was vital to Chambers's story, for it embraced the period of Hiss's service with the Senate Committee Investigating the Munitions Industry (the so-called Nye Committee), during which Chambers claimed that Hiss first began to turn over to him confidential State Department documents which he had obtained in his official capacity, and it also embraced the period of Chambers's stay at the 28th Street apartment. I quote relevant portions of Mr. Pressman's testimony before the House Committee on August 28, 1950 (Hearings Regarding Communism in the United States Government—Part 2, Committee on Un-American Activities, House of Representatives, Eighty-first Congress, Second Session):

In my desire to see the destruction of Hitlerism and an improvement in economic conditions here at home, I joined a Communist group in Washington, D. C., about 1934. My participation in such group extended for about a year, to the best of my recollection. I recall that about the latter part of 1935—the precise date I cannot recall, but it is a matter of public record—I left the Government service and left Washington to reenter the private practice of law in New York City. And at that time I discontinued any further participation in the group from that date until the present (p. 2845).

\* \* \* \* Kisseloff-23358

Now, I believe it of interest to comment that I have no knowledge regarding the political beliefs or affiliations of Alger Hiss. And when I say I have no knowledge, I am not endeavoring to quibble with this committee. I appear here, as I necessarily must, as a lawyer. I am a lawyer. When one asks me for knowledge, knowledge to my mind is based on fact, and I have no facts. And bear in mind, sir, that as an attorney, to be asked to comment on a case now pending in court is a very unusual experience for an attorney, because anything I say undoubtedly may have an impact one way or another on that case, and for that reason I am trying to be very, very precise. I do know, and I can state as a matter of knowledge, that for the period of my participation in that group, which is the only basis on which I can say I have knowledge, Alger Hiss was not a member of the group.

Now, those two statements of mine are based on knowledge, which embraces facts within my possession. I do not believe that this committee would want me to hazard conjectural surmise. That is not my function. You want from me, I assume, facts and nothing but facts (p. 2845).

\* \* \* \* \*

Mr. Tavenner. What were the circumstances under which you united with the Communist Party? That is, who recruited you into the party and all other circumstances connected with it?

Mr. Pressman. The circumstances are very simple. I was asked to join by a man named Harold Ware. For the reasons which I have already indicated, I assented, and I joined with the group which had, in addition to myself, three other persons, all of whom at that time were in the Department of Agriculture (p. 2850).

\* \* \* \* \*

Mr. Case. Were there other Government employees who were members of your group?

Mr. Pressman. No, sir. I have stated there were only four.

Mr. Case. You have made a distinction between those who were employees of the Department of Agriculture and other Government employees.

Mr. Pressman. No. I have said there were four, only four, no more, no less (p. 2854).

This Communist group was the core of Chambers's admitted conspiracy to infiltrate the Government in the interests of the Soviets. Evidence from a self-confessed member of the group that Alger Hiss, the defendant here, was not a member of it would have been deeply damaging to the Government's case; and now that that evidence has become available a new trial should be had at which Mr. Pressman can be subpoenaed and given an opportunity to reiterate his testimony before a jury.

#### CONCLUSION

This motion is made with full appreciation of the fact that new trials are not lightly granted, and that a showing must be made that upon a new trial the newly discovered evidence, if placed before the jury together with the old, would more than probably produce an acquittal.

I believe that such a showing will be made on this motion. I believe that the new evidence now offered hits so deeply at the vital aspects of the Government's case as it was presented to the jury that if it can be presented at a new trial it cannot fail to produce a different verdict.

All the evidence hereby presented is newly discovered since the second trial, and I assure the Court that it has been gathered and

presented with the greatest diligence of which I and my associates have been capable. I have referred at length under Point II to the disheartening difficulties with which we have been faced in our search for the history of the typewriter. Furthermore, for approximately the whole of the first year of the two year period since the judgment and sentence the energies of counsel, including myself, were unavoidably in large part devoted to the preparation of the record and briefs on appeal and in certiorari proceedings in the Supreme Court. The investigation has had to be pursued in many parts of the United States and in foreign countries, and many lines of inquiry which looked and still look promising have had to be deferred temporarily, or even abandoned, because of lack of funds and personnel. While it is true that certain portions of the new evidence—such as the evidence under Point III, relating to Edith Murray—could have been presented earlier, I concluded that it would be an imposition on the Court to make successive motions on different points, and that the only proper course would be to defer making any motion until we were in a position to present to the Court the best possible comprehensive showing of the falsity of Chambers's story and the inadequacy of his alleged corroboration to substantiate his story under the rule of the *Weiler* case.

I believe that such a showing is made. Any fair reading of the record shows beyond question that Chambers's testimony was riddled with inconsistencies and improbabilities, and it is inconceivable that the jury would have believed it, or convicted on either count, if it had not been for the apparent corroboration furnished by the Baltimore Documents, and by the testimony of Edith Murray supporting the Chamberses' story of social relations between the two families. These spurious corroborations we are now for the first time in a position to challenge successfully; and when we can also show by documentary evidence that the event which Chambers himself said marked the end of his Party activity and his alleged conspiracy with Hiss had occurred at least weeks before the date of many of the Baltimore Documents he claimed to have received from Hiss, I believe that no jury could possibly feel sufficient confidence in the Government's case to vote for conviction.

Sworn to before me this  
24th day of January, 1952

*Margaret L. Burton*

Notary Public for the State of New York  
Qualified in New York County  
No. 31-0515250  
Certs. Filed with Co. Clks., Kings and  
Rockland and with City Reg's. N. Y. and Kings  
Commission Expires March 30, 1953

(Seal)

*Chester T. Lane*

Kisseloff-23360

94-1333-4802

Kisseloff-23361



**EXHIBIT I-A**

STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss.:

MARTIN K. TYTELL, of 123 Fulton Street, New York, New York, being duly sworn, deposes and says:

I am a typewriter expert, with many years of specialized experience in the creation of unique typewriters for foreign language and other purposes.

At some time in 1950 I was consulted by Chester T. Lane, attorney for Alger Hiss. He asked me if it would be possible to construct a typewriter whose product would so nearly match the product of another typewriter in type defects, alignment and all other respects that a document expert comparing typed samples from the two machines would be led to believe that they had all been typed on the same machine. I told him that I thought this was entirely possible, particularly if I could have access to the machine which he wanted duplicated. He said he was more interested in finding out whether a duplicate machine could be constructed solely on the basis of samples taken from the machine to be duplicated. I said I believed this could be done, and undertook to try it.

I have constructed a machine which I believe meets Mr. Lane's specifications. Neither I nor any of my associates in the work have had any access whatsoever to the original machine during the course of the experiment.

The duplicate machine has taken longer to construct than I originally expected. This is due in part to the fact that it was many months before a qualified impartial document examiner could be found who was able and willing to examine my results as I went along and check me on my progress.

So far as I know, this is the first time such a machine has ever been made except possibly for forgery or other illegal purposes. With the experience I and my associates have gained through this experiment I am confident that we could now create other duplicates with an even higher degree of fidelity in a fraction of the time which this machine has taken.

MARTIN K. TYTELL

Sworn to before me this  
23rd day of January, 1952.

MARGARET L. BURTON  
Notary Public for the State of New York  
Qualified in New York County  
No. 31-0515250  
Certs. Filed with Co. Clks., Kings and  
Rockland and with City Reg's. N. Y. and Kings  
Commission Expires March 30, 1953

Kisseloff-23362

*Exhibit I-A*

**EXHIBIT I-B**

STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss.:

I, Elizabeth McCarthy, of Boston, Suffolk County, Massachusetts, on oath depose and say:

I reside at 16 Porter Street and have an office at 40 Court Street, both in said Boston.

I am a qualified examiner of questioned documents.

I was graduated from Vassar College with a degree of A.B., from Simmons College, and from Portia Law School with a degree of LL.B.

I am an attorney at law.

During the last sixteen years I have testified frequently in state and federal courts in many parts of the country in cases involving questioned handwriting, typewriting, inks, paper, rubber stamps, imprints, et cetera. I have frequently been employed as a document expert by both federal and state prosecuting officials and law enforcement agencies, and pursuant to such employment have examined documents, prepared reports, rendered expert opinions, and presented expert testimony in court on behalf of both federal and state governments. I have lectured at various law schools and before bar associations and banking groups on the subject of document identification, and on the presentation of testimony on the subject. I have qualified as an expert in the examination of disputed typewritten documents in many courts in various jurisdictions and have been consulted by many judges of such courts. I am at present the document expert for the Police Department of the City of Boston and for the Massachusetts State Police. I have had occasion in many cases to make intensive studies of questioned typewriting and to make comparisons with samples taken from other machines.

Heretofore, so far as I am aware, it has been the underlying assumption of all qualified document examiners, including myself, that no two typewriters could ever, merely by accidental coincidence, make identical impressions, and also that it would be as a practical matter impossible to change or adapt any one machine to the extent necessary to enable it to duplicate the product of another machine in all relevant respects. As a consequence it has been the practice of document examiners, however highly qualified, to concentrate their examination upon the presence or absence of a substantial number of identical peculiarities or irregularities in the questioned and known typing, in the belief that if any considerable number of such identical peculiarities or irregularities was found there would be no possibility that even the laws of chance could have produced such peculiarities in two separate machines. This evidently was the basis of the opinion given by the Government's expert, Ramos C. Feehan, in his testimony at the second trial, since he testified solely as to the existence of ten specific identical peculiarities in the type impressions in the two sets of documents. It could not have occurred to Mr. Feehan, any more than it would have occurred to any other qualified document examiner, that even a possibility existed of a machine having been fabricated to such an extent of perfection as to be able to produce as many identical peculiarities of type as appeared in the two sets of documents.

Kisseloff-23363

*Exhibit I-B*

In the earlier part of this year I was consulted by Chester T. Lane, Esquire, attorney, of 70 Pine Street, New York City. He told me he was conducting an experiment to determine whether it would as a practical matter be possible to build a typewriter which would meet the standards of identity accepted by document examiners as grounds for a conclusion that a single machine had been used in two sets of documents. He said he had for a long time been looking for a qualified expert who could assist in the experiment by checking the results but that all the experts he had so far talked to had refused to have any part of it. I said I doubted that such an experiment could in any large measure be successful, but I expressed my willingness to examine the products of his experimental machine as the experiment continued, and to point out the respects in which the attempted duplication had not yet been successful. In undertaking this assignment I had in mind that the profession of document examiners, as well as the public at large, were entitled to learn whether any such experiment could be successfully conducted, since if it could, general knowledge of the fact would be essential as a means of preventing large numbers of forgeries which otherwise might be successfully carried out.

It was agreed that I should confine any examination to samples from the two machines without at any time inspecting the machines themselves, or any duplicates of their type; and my work throughout has been confined to typed samples.

The experiment has now been completed to the greatest extent possible in the time allowed. I am not prepared to say that the duplication between the two machines is even yet complete to the highest degree of accuracy, and in fact I know that there are still a small number of characters sufficiently dissimilar so that in the light of the careful observation I have had occasion to give to samples from the two machines during the progress of the experiment I should myself find it possible to distinguish between the products of the two machines. Nevertheless, it is my opinion, based upon my long experience in methods of questioned document examination, that the duplication has progressed to such a degree that an expert in the field, however highly qualified, would find it difficult if not impossible to distinguish between samples from the two machines.

I attach samples of the writing from the two machines, which I believe will demonstrate the soundness of this conclusion. I have a key showing which samples were made on which machine, and shall be glad to furnish it to the court should it be desired to check the accuracy of the results of any test to which the Government may choose to subject the samples.

I should add that even if it can be demonstrated that my above conclusion is unfounded, it is my opinion as an expert in the examination of questioned documents that the duplication has progressed to a point where any document examiner not forewarned (as anyone now examining these samples must necessarily be) that a deliberate attempt at duplication of machines had been made, would be deceived into thinking that all the samples were made on a single machine. In particular, the success of the experiment shows that any such testimony as that given by the Government's expert, Mr. Feehan, at the second trial, basing his conclusion of identity of machines on the iden-

Kisseloff-23364

*Exhibit I-B*

tity of only ten characters in the two sets of documents, is absolutely worthless.

ELIZABETH MCCARTHY

Sworn to before me this  
22nd day of January, 1952.

MARGARET L. BURTON  
Notary Public for the State of New York  
Qualified in New York County  
No. 31-0515250  
Certs. Filed with Co. Clks., Kings and  
Rockland and with City Reg's. N. Y. and Kings  
Commission Expires March 30, 1953

(Seal)

Kisseloff-23365

*Exhibit I-B*

74-1333-4802

Kisseloff-23366